

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 369 (Sub-No. 7X)

BUFFALO & PITTSBURGH RAILROAD, INC.—ABANDONMENT EXEMPTION—IN  
ERIE AND CATTARAUGUS COUNTIES, N.Y.

Decided: May 13, 2016

Buffalo & Pittsburgh Railroad, Inc. (BPRR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 27.6-mile rail line of railroad between milepost 8.4 in Orchard Park, in Erie County, N.Y., and milepost 36 in Ashford, in Cattaraugus County, N.Y. Notice of the exemption was served and published in the Federal Register on October 6, 2008 (73 Fed. Reg. 58,297). By decision and Notice of Interim Trail Use or Abandonment (NITU) served on November 4, 2008, the proceeding was reopened and a 180-day period was authorized for the New York State Office of Parks, Recreation and Historic Preservation (NYS Office of Parks) to negotiate an interim trail use/rail banking agreement with BPRR for the 27.6-mile line pursuant to the National Trails System Act, 16 U.S.C. § 1247(d).<sup>1</sup> By a series of decisions, the most recent served on April 13, 2015, the NITU negotiating period was extended until September 30, 2015.<sup>2</sup>

On March 11, 2016, NYS Office of Parks and ECRT (jointly, Petitioners), filed a joint petition requesting that the Board reopen the proceeding, vacate the existing NITU, and issue a replacement NITU substituting ECRT as the new interim trail sponsor in place of NYS Office of Parks.<sup>3</sup> Petitioners state that, to date, NYS Office of Parks and BPRR have not been able to negotiate a trail use agreement and that NYS Office of Parks is no longer interested in becoming the trail manager of the line. The petition includes a copy of the extant NITU and a statement of ECRT's willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied

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<sup>1</sup> In addition to interim trail use, the November 4, 2008 decision also imposed a public use condition that expired on May 4, 2009, a historic preservation condition which was removed by decision served on February 6, 2009, and three environmental conditions that remain in effect.

<sup>2</sup> In a letter filed on October 26, 2015, Erie Cattaraugus Rail Trail, Inc. (ECRT) requested a 180-day extension to negotiate interim trail use with BPRR in lieu of NYS Office of Parks.

<sup>3</sup> In a letter filed on December 8, 2015, ECRT requested substitution of applicant but failed to meet the requirements of 49 C.F.R. § 1152.29. On March 11, 2016, ECRT submitted the required documents. Therefore, March 11, 2016, will be the official filing date.

or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29. ECRT acknowledges that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a letter filed on March 23, 2016, BPRR states that it does not oppose the substitution and agrees that the replacement NITU include a new 180-day negotiation period.

Petitioners' submission meets the requirements of 49 C.F.R. § 1152.29(f). Accordingly, petitioners' request will be granted and a replacement NITU will be issued.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on November 4, 2008, is vacated.
3. A replacement NITU is issued to ECTR as the new interim trail sponsor for the line effective on the service date of this decision and notice, for a period of 180 days from the service date, until November 12, 2016.
4. If an interim trail use/railbanking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for (i) managing the right-of-way, (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (ii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. §1152.29(d)(2) and (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
8. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.