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SERVICE DATE - JULY 27, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-494X

AKRON BARBERTON CLUSTER RAILWAY COMPANY--
ABANDONMENT EXEMPTION--IN SUMMIT COUNTY, OH

Decided: July 23, 1998

Akron Barberton Cluster Railway Company (ABCR) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 4.14 miles of its line of railroad from Valuation Station 440 + 00 at Main Street to Valuation Station 658 + 63 at Seiberling Avenue, in Summit County, OH. Notice of the exemption was served and published in the Federal Register on May 21, 1998 (63 FR 28026-27). The exemption became effective on June 20, 1998.

By decision served June 18, 1998, the exemption was made subject to the conditions that ABCR consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers and that ABCR consult with the State of Ohio Environmental Protection Agency, Division of Surface Water, prior to conducting salvage operations, and take appropriate measures to prevent or control spills from fuels, lubricants, or any other pollutants from entering any watercourses.

By petition filed July 14, 1998, the City of Akron (City) late-filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) in order to negotiate with ABCR for acquisition of the right-of-way for use as a trail.¹ The City submitted a statement indicating its willingness to assume full financial

¹ The July 14, 1998 filing requested that the NITU be issued for 1.11 miles of railroad from Valuation Station 440 + 00 at Main Street to Valuation Station 658 + 63 at Seiberling Avenue. However, the City amended the request on July 21, 1998, informing the Board that the line is 4.14 miles.

The May 21 notice provided that trail use/rail banking requests had to be filed no later than June 1, 1998. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), the Board stated that, when good cause is shown, filings would be accepted after the due date. Because the City has made the requisite "good cause" showing in explaining that its filing is based on a recently completed, comprehensive review process and study, and there is no indication that the City's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company--Abandonment Exemption--In Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

responsibility for the management of, for any legal liability arising out of the transfer or use of the right-of-way (unless user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of taxes for, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By reply filed July 17, 1998, ABCR indicated its willingness to negotiate with the City for interim trail use.

The City's request complies with the requirements of 49 CFR 1152.29 and ABCR is willing to negotiate. Therefore a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, ABCR may fully abandon the line. See 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption published in the Federal Register on May 21, 1998, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision and notice (until January 23, 1999).
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must sent the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by the 180th day after the service date of this decision, interim trail use may be implemented. If no agreement is reached by that time, ABCR may fully abandon the line.

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7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary