

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 281X)

YADKIN RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN STANLY COUNTY, NC

Decided: December 13, 2006

Yadkin Railroad Company (Yadkin) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.14-mile line of railroad between milepost N 27.50 in North Albemarle and milepost N 31.64 in Albemarle, Stanly County, NC.¹ Notice of the exemption was served and published in the Federal Register on November 14, 2006 (71 FR 66364-65). The exemption is scheduled to become effective on December 14, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 17, 2006. In the EA, SEA notes that the North Carolina Department of Environment and Natural Resources, Division of Water Quality (DWQ), has submitted comments stating that it appears that the proposed abandonment and discontinuance of service would cause minimal land disturbance. However, DWQ indicated that state erosion and sedimentation control requirements might be applicable. Therefore, SEA recommends that Yadkin be required to consult with the North Carolina Division of Land Resources (DLR) prior to beginning any salvage activities regarding applicable erosion and sedimentation control requirements. SEA also notes in the EA that DWQ stated that, if the proposed abandonment activities would require erosion and sediment control plan approval for land disturbance of one acre or more, Yadkin would also need to meet the requirements of DWQ's National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge permit. Therefore, SEA recommends that Yadkin be required to consult with DWQ prior to beginning any salvage activities regarding applicable NPDES requirements.

SEA further notes in the EA that DWQ stated that Yadkin should consult with the staff in the North Carolina Department of Environment and Natural Resources' Mooresville Regional Office (Mooresville Regional Office) regarding potential applicable requirements for impacts to surface waters or wetlands that could be caused by Yadkin's potential bridge removal activities. The North Carolina Department of Environment and Natural Resources also submitted a form through the North Carolina Department of Administration (State Clearinghouse) that indicated

¹ Norfolk Southern Railway Company (NSR) jointly filed this notice of exemption in order for NSR to discontinue service over the same line in STB Docket No. AB-290 (Sub-No. 270X), Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Stanly County, NC.

that any open burning activities or demolition of structures containing asbestos during salvage must be in compliance with specific state regulations, that an erosion and sedimentation control plan would be required if one or more acres are to be disturbed, and that the Mooresville Regional Office should be consulted regarding any questions. Therefore, SEA recommends that Yadkin be required to consult with the Mooresville Regional Office prior to beginning any salvage activities regarding potential impacts to surface waters or wetlands from the proposed bridge removal activities and applicable requirements, and any other applicable requirements. Finally, SEA in the EA notes that the National Geodetic Survey (NGS) submitted comments stating that 15 geodetic station markers may be located in the area of the proposed abandonment. Therefore, SEA recommends that Yadkin be required to notify the NGS at least 90 days prior to beginning salvage activities so that NGS may plan for the possible relocation of the geodetic station markers identified by NGS.

Comments to the EA were due by December 4, 2006. No comments, other than the public use and trail use requests discussed below, were received by the due date. Accordingly, the conditions recommended by SEA in the EA will be imposed.

On November 22, 2006, the City of Albemarle, NC (City), filed a request for the issuance of a 180-day public use condition under 49 U.S.C. 10905 and a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, for a portion of the right-of-way, between milepost N 29.60 and milepost N 31.64, a distance of approximately 2 miles. The City has submitted a statement of willingness to assume financial responsibility for the management of, indemnification of 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, 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. In a response submitted on December 8, 2006, Yadkin consents to the issuance of a NITU for the portion of the right-of-way being sought.

Because the City's request complies with the requirements of 49 CFR 1152.29 and Yadkin is willing to negotiate for trail use, a NITU will be issued for the portion of the right-of-way being sought. 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, Yadkin may fully abandon that portion of the line being sought subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be

effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the December 14, 2006 effective date of the exemption.

When the need for interim rail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, Yadkin must keep the remaining portion intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, Yadkin is not required to deal exclusively with the City, but may engage in negotiation with other interested persons.

As conditioned, 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 served and published in the Federal Register on November 14, 2006, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below, for a period of 180 days commencing from the December 14, 2006 effective date of the exemption until (until June 12, 2007), regarding the approximately 2-mile portion of the line discussed above, and subject to the conditions that Yadkin shall: (1) consult with the DLR prior to beginning any salvage activities regarding applicable erosion and sedimentation control requirements; (2) consult with DWQ prior to beginning any salvage activities regarding applicable NPDES requirements; (3) consult with the Mooresville Regional Office prior to beginning any salvage activities regarding potential impacts to surface waters or wetlands from the proposed bridge removal activities and applicable requirements, and any other applicable requirements; and (4) provide NGS with at least 90 days' notice prior to beginning salvage activities so that NGS may plan for the possible relocation of the geodetic station markers identified by NGS.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, Yadkin may discontinue service and salvage track, and related materials. For the above-described approximately 2-mile portion of the line, Yadkin shall keep intact the right-of-way, including bridges, trestles, culverts and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before June 12, 2007, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

4. 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.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by June 12, 2007, interim trail use may be implemented. If no agreement is reached by that time, Yadkin may fully abandon the above-described portion of the line, provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary