

SERVICE DATE – MAY 18, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 490 (Sub-No. 2X)

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION—
ABANDONMENT EXEMPTION—IN GREENVILLE COUNTY, S.C.

Decided: May 18, 2015

This decision reopens this proceeding, issues a notice of interim trail use (NITU), and denies a request for the imposition of a public use condition.

Greenville County Economic Development Corporation (GCEDC) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments for GCEDC to abandon approximately 3.29 miles of railroad line extending between milepost AJK 585.34 in East Greenville, S.C., and milepost AJK 588.63 in Greenville, S.C. Notice of the exemption was served and published in the Federal Register on January 9, 2015 (80 Fed. Reg. 1,470). By decision served on February 6, 2015, the Board imposed four environmental conditions, and the exemption became effective on February 8, 2015.

On March 16, 2015, the County of Greenville, S.C. (the County), filed late a request for the issuance of a NITU for the line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29, and for a public use condition under 49 U.S.C. § 10905, to negotiate with GCEDC for acquisition of the right-of-way for other public use. The County supplemented its request on April 8, 2015.¹

In support of its request for a NITU, the County submitted a statement of willingness to assume full responsibility for the management of, and indemnify the railroad against any potential liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the line for rail service. In a letter filed on April 10, 2015, as

¹ The January 9, 2015 notice provided that requests for trail use/rail banking were to be filed by January 20, 2015. However, in Abandonment & Discontinuance Of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that the County's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Ry.—Aban. Exemption—in Starke Cnty., Ohio, AB 227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

supplemented by a letter filed on April 17, 2015, GCEDC states that it is willing to negotiate with the County for interim trail use.

Because the County's request complies with the requirements of 49 C.F.R. § 1152.29 and GCEDC is willing to negotiate with the County for trail use, this proceeding will be reopened and a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. 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. See 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, GCEDC may fully abandon the line, subject to any outstanding conditions imposed in this proceeding. See 49 C.F.R. § 1152.29(d)(1). 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.

The County also has requested the imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way to allow the County to explore alternative public use of the line. As an alternative to interim trail use under the Trails Act, a right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 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) a justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Here, however, the County has not satisfied the requirements of § 1152.28(a)(2). Specifically, the County has not set forth the condition sought, provided the period of time for which the condition would be effective, or justified the imposition of the period of time requested. As a result, the County's request for the imposition of a public use condition will be denied.

This action 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. The County's late-filed request for a NITU under 16 U.S.C. § 1247(d) is accepted and granted.
3. The County's late-filed request for the imposition of a public use condition is denied.

4. Upon reconsideration, the notice served and published in the Federal Register on January 9, 2015, 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 to permit the County to negotiate with GCEDC for trail use for a period of 180 days from the service date of this decision and notice (until November 14, 2015).

5. If an interim trail use/rail banking 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 trail sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

6. 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 5 above.

7. 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).

8. 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.

9. If an agreement for interim trail use/rail banking is reached by November 14, 2015, for the right-of-way, interim trail use may be implemented. If no agreement is reached, GCEDC may fully abandon the line, subject to any outstanding conditions imposed in this proceeding.

10. This decision and notice is effective on its service date.

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