

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1064X

FULTON COUNTY, LLC—ABANDONMENT EXEMPTION—
IN FULTON COUNTY, IND.

Decided: August 19, 2010

Fulton County, LLC (FC) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon its line of railroad between milepost 96.9, a point 200 feet north of East 18th Street, and milepost 95.6, the end of the track at the northwest property line of Wabash Road, a distance of 1.3 miles, in Rochester, Fulton County, Ind. Notice of the exemption was served and published in the Federal Register on July 22, 2010 (75 Fed. Reg. 42,815-16). The exemption is scheduled to become effective on August 21, 2010.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 23, 2010, recommending that no environmental conditions be imposed on any decision granting abandonment authority. Comments to the EA were due by August 10, 2010, but none were received. Accordingly, no environmental or historic preservation conditions will be imposed.

In the EA, SEA states that the right-of-way may be suitable for other public use following abandonment of the line. On August 11, 2010, Nickel Plate Trail, Inc. (Nickel Plate), a public-private interest organization, filed a request for a public use condition under 49 U.S.C. § 10905 and for the 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), and 49 C.F.R. § 1152.29, to negotiate with FC for the acquisition of the right-of-way for use as a trail.¹ Nickel Plate requests that FC be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that FC be barred from removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment. Nickel Plate's justification for its request is that the corridor would extend the existing, over 40-mile Nickel Plate recreational trail north into the city limits of Rochester, Ind., in accord with local plans. Nickel Plate states that the 180-day period is needed to assemble and review title information and to complete a trail plan.

¹ While Nickel Plate's request for a public use condition is timely filed, its request for a NITU is late because it was due by August 2, 2010. The Board accepts late-filed requests for a NITU as long as it retains jurisdiction to do so. Here, FC has not yet abandoned the rail line, and consequently the Board retains jurisdiction to issue a NITU.

Nickel Plate also has submitted a statement of willingness to assume full financial responsibility for the 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 or assessed against, the right-of-way, as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service.

In a response filed on August 12, 2010, FC states that it is willing to negotiate with Nickel Plate for interim trail use.

Because Nickel Plate's request complies with the requirements of 49 C.F.R. § 1152.29, and FC is willing to negotiate with Nickel Plate for trail use, a NITU will be issued to FC. The parties may negotiate an agreement during the 180-day period described below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, FC may fully abandon the line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Aban.—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) justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Because Nickel Plate has satisfied these requirements, a 180-day public use condition requiring FC to keep intact the right-of-way (including bridges, trestles, culverts, tunnels, track, ties, and signal equipment) will be imposed, commencing from the August 21, 2010 effective date of the exemption.

When the need for interim trail 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. Here, however, while both conditions will be imposed at this time, the public use condition will expire on February 17, 2011, while the trail use negotiating period will run 180 days from the service date of this decision and notice (until February 16, 2011). If a trail use agreement is reached on a portion of the right-of-way prior to February 17, 2011, FC must keep the remaining right-of-way 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 any 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, FC is not required to deal exclusively with Nickel Plate, but may engage in negotiations with other interested persons.

Abandonment of this rail line will have no significant effect on the quality of the human environment and the conservation of energy resources or on historic resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on July 22, 2010, exempting the abandonment of the line described above, is modified to the extent necessary: (1) to implement interim trail use/rail banking as set forth below to permit Nickel Plate to negotiate with FC for trail use of the subject line, for a period of 180 days from the service date of this decision and notice (until February 16, 2011); and (2) to permit public use negotiations as set forth below, for a period of 180 days commencing from the August 21, 2010 effective date of the exemption (until February 17, 2011).
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, FC may discontinue service over the line. FC shall keep intact the right-of-way, including bridges, trestles, culverts, tunnels, track, ties, and signal equipment, 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. Because of the terms of the public use condition imposed herein, FC may not salvage track and related materials while the public use condition remains in effect. If an interim trail use/rail banking agreement is executed before the expiration of the 180-day period, 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 any future use of the property for restoration of railroad operations 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, the trail user 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 February 16, 2011, interim trail use may be implemented. If no agreement is reached by that time, FC may fully abandon the line, after the conditions imposed in this proceeding are met. See 49 C.F.R. § 1152.29(d)(1).

8. This decision and notice is effective on its date of service.

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