

42445  
DO

SERVICE DATE – JUNE 21, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 312 (Sub-No. 3X)

SOUTH CAROLINA CENTRAL RAILROAD COMPANY, LLC—ABANDONMENT  
EXEMPTION—IN CHESTERFIELD AND DARLINGTON COUNTIES, S.C.

Decided: June 20, 2012

This decision vacates the Notice of Interim Trail Use (NITU) that was issued in this proceeding.

South Carolina Central Railroad Company, LLC (SCRF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 12.8 miles of rail line beginning at milepost 319.89 +/- (centerline of Burlington Drive road crossing), near Society Hill, and extending in a northerly direction to milepost 332.68 (south line of Market Street), including other legs of wye track extending westerly to milepost 332.48 (east line of U.S. Route 1), in Cheraw, in Chesterfield and Darlington Counties, S.C. Notice of the exemption was served and published in the Federal Register on January 6, 2012 (77 Fed. Reg. 835-36). The exemption became effective on February 5, 2012.

By decision and notice of interim trail use or abandonment (NITU) served on February 3, 2012 (February 2012 decision), the proceeding was reopened and a 180-day period was authorized for the Town of Cheraw, S.C. (the Town) to negotiate an interim trail use/rail banking agreement with SCRF for the right-of-way (ROW) involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). The NITU negotiating period expires on August 1, 2012. The February 2012 decision also permitted public use negotiations for the ROW under 49 U.S.C. § 10905 for a 180-day period from the effective date of the abandonment exemption (until August 3, 2012).

On May 31, 2012, the Town filed a document entitled “Notice of Termination of Negotiations between the Town and SCRF to acquire the ROW, and Notice of the Withdrawal of all Purchase Offers by Town to SCRF, and Notice of Withdrawal by Town of its Statement of Willingness to Assume Financial Responsibility, and Town’s Request That STB Amend Its Prior Decision” (Notice). In its cover letter, the Town states that negotiations with SCRF and RailAmerica, SCRF’s parent company, reached an impasse over pricing for the ROW that could not be mutually resolved. In the Notice, the Town states that it is withdrawing from all negotiations with SCRF for the ROW and rescinding its Statement of Willingness To Assume

Financial Responsibility,<sup>1</sup> and requests that the Board “amend accordingly” the February 2012 decision. SCRF has not responded to the Notice.

The Town’s request will be granted in part and denied in part. Under the Trails Act, interim trail use negotiations are voluntary and consensual between the railroad and the trail sponsor. Rail Abans.—Use of Rights-of Way as Trails, 2 I.C.C.2d 591, 598 (1986); Nat’l Wildlife Fed’n v. ICC, 850 F.2d 694, 699-702 (D.C Cir. 1988). Further, the Board’s role under the Trails Act is limited and largely ministerial. See Citizens Against Rails to Trails v. STB, 267 F.3d 1144 (D.C. Cir 2001). Here, the Town no longer consents to continued negotiations and has indicated that it no longer is willing to assume the responsibilities required of a trail sponsor under the Board’s interim trail use regulations. Therefore, it would be inappropriate to keep the NITU in place. Accordingly, the NITU issued in the February 2012 decision will be vacated.

To the extent, however, that the Notice may be construed as a request to vacate the public use condition, that request will be denied. As noted in the February 2012 decision, 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 ROW that has been found suitable for public purposes, including trail use. Thus, although the Town apparently no longer wishes to (and need not) negotiate with SCRF under the public use condition, that condition will remain in place for the benefit of any other interested person who may wish to do so during the specified time frame.

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

It is ordered:

1. The proceeding is reopened.
2. The NITU issued in the February 2012 decision is vacated, effective on the date of service of this decision.
3. The public use condition imposed in the February 2012 decision shall remain in effect until August 3, 2012.
4. This decision is effective on its date of service.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.

---

<sup>1</sup> See 49 C.F.R. § 1152.29(a)(3).