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SERVICE DATE - MARCH 5, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-297 (Sub-No. 101X)

COLUMBUS AND GREENVILLE RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN BOLIVAR AND WASHINGTON COUNTIES, MS

Decided: March 2, 1999

Columbus and Greenville Railway Company (C&G) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 49.14 miles of rail line between milepost 109.3 near the City of Cleveland and milepost 158.44 near the City of Hollandale, in Bolivar and Washington Counties, MS. Notice of the exemption was served and published in the Federal Register on February 4, 1999 (63 FR 5701). The exemption is scheduled to become effective on March 6, 1999.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA) in this proceeding, served February 9, 1999. In the EA, SEA indicates that the right-of-way may be suitable for other public use following abandonment. On February 16, 1999, the City of Cleveland (Cleveland) and the City of Hollandale (Hollandale) filed separate requests 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 for a public use condition under 49 U.S.C. 10905, in order to negotiate with C&G for acquisition of the right-of-way for use as a trail. On February 19, 1999, the City of Shaw (Shaw) filed a request for a NITU and for a public use condition. Cleveland, Hollandale, and Shaw seek to acquire separate line segments. Cleveland seeks a portion of the right-of-way between milepost 113 + 1700 and milepost 113 +1850, between Hollandale and Cleveland;¹ Hollandale seeks a portion of the right-of-way between milepost 140.1 in Leland and milepost 158.44 in Hollandale, a distance of 18.3 miles in Washington County, MS; and Shaw seeks a portion of the right-of-way from approximately milepost 123 near the north end of Shaw to approximately milepost 126 near the south end of Shaw, a distance of approximately 3 miles in Bolivar County, MS. By reply filed February 23, 1999, C&G indicated its willingness to negotiate with the cities of Cleveland, Hollandale, and Shaw for interim trail use. Accordingly, a NITU shall be issued covering the line segments as described in this paragraph.

Cleveland, Hollandale, and Shaw request that C&G be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that C&G be barred from removing or destroying any trail-related structures, such as bridges,

¹ Cleveland states that, if it is determined at a later date that the area between milepost 114 + 3100 and milepost 115 + 1850 is not feasible to develop into a trail, it will submit a request to withdraw that portion.

trestles, culverts and tunnels, for a 180-day period from the effective date of abandonment exemption. Cleveland states that it needs the full 180-day period because it is applying to the State of Mississippi Department of Transportation for funds to convert the right-of-way through downtown to a pedestrian trail and additional time is needed to negotiate with C&G and complete the application to the State. Hollandale and Shaw state that they need the full 180-day period allowed because they have not had the opportunity to assemble or to review title information, complete a trail plan, or commence negotiations with C&G.

Cleveland, Hollandale, and Shaw submitted statements indicating their willingness to assume financial responsibility for the 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 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.

The trail use requests of Cleveland, Hollandale, and Shaw comply with the requirements of 49 CFR 1152.29 and C&G 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, C&G may fully abandon the line. 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 as a trail 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 1152.28(a)(2). The parties have satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the 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. If a trail use agreement is reached on a portion of the right-of way, C&G 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,

C&G is not required to deal exclusively with Cleveland, Hollandale, and Shaw, but may engage in negotiations with other interested persons.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on February 4, 1999, 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 portions of the line extending: (a) between milepost 113 + 1700 and milepost 115 + 1850 between Hollandale and Cleveland; (b) between milepost 140.1 in Leland and milepost 158.44 in Hollandale; and (c) between approximately milepost 123 near the north end of Shaw to approximately milepost 126 near the south end of Shaw, and is subject to the conditions that C&G keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials), for a period of 180 days from the March 6, 1999 effective date (until September 2, 1999), 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 the expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
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 obligations for the right-of-way.
5. 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.
6. If an agreement for interim trail use/rail banking is reached by September 2, 1999, interim trail use may be implemented. If no agreement is reached by that time, C&G 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