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SERVICE DATE - MARCH 19, 1999

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: March 16, 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 (64 FR 5701). On March 5, 1999, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for C&G to negotiate an agreement with: (1) the City of Cleveland for a portion of the right-of-way between milepost 113 + 1700 and milepost 113 + 1850 between Hollandale and Cleveland;<sup>1</sup> (2) the City of Hollandale for 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 (3) the City of Shaw for 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. The 180-day period is scheduled to expire on September 2, 1999.

On March 5, 1998, the Town of Boyle (Boyle) late-filed a request for issuance of a NITU pursuant to the National Trails System Act, 16 U.S.C. 1247(d), and a request for a public use condition under 49 U.S.C. 10905, in order to negotiate with C&G for a portion of the right-of-way from 3,432 feet north of milepost 116 to milepost 117 in Boyle, a distance of approximately 1.5 miles in Bolivar County, MS. Boyle submitted a statement of willingness to assume financial responsibility for management of, for any legal liability arising out of the transfer or use of, and for payment of taxes for, the right-of-way, as required under 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of rail service.<sup>2</sup> By reply filed March 12, 1999, C&G indicated its willingness to negotiate with Boyle

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<sup>1</sup> Cleveland stated 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.

<sup>2</sup> The February 4 notice provided that requests for trail use/rail banking had to be filed by February 16, 1999, and that requests for public use conditions had to be filed by February 24, 1999. Boyle's request for a public use condition is moot, because a public use condition has already been  
(continued...)

for interim trail use. Accordingly, a NITU shall be issued covering the line segment as described in this paragraph.

Trail use request are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way<sup>3</sup> and the carrier is willing to enter into negotiations. Inasmuch as the requirements of 49 CFR 1152.29 have been satisfied and C&G is willing to negotiate trail use, a NITU will be issued to Boyle, as an additional party qualified to negotiate with C&G, with the trail use negotiation period running through September 2, 1999. If no agreement is reached during this period, C&G may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(1).

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 decision served on March 5, 1999, exempting the abandonment by C&G of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below for the portion of the right-of-way from 3,432 feet north of milepost 116 to milepost 117 in Boyle, Bolivar County, MS, until September 2, 1999.
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.

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<sup>2</sup>(...continued)

imposed in the decision served March 5, 1999. A public use condition is not imposed for the benefit of any one potential user, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use.

<sup>3</sup> See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

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 of 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 date, C&G may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary