

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: February 3, 2012

This decision reopens this proceeding to issue a notice of interim trail use and a public use condition and makes a Finding of No Significant Impact under 49 U.S.C. § 1105.10(g).

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) (January 2012 notice). The exemption is scheduled to become effective on February 5, 2012.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on January 13, 2012. In the EA, OEA states that the Natural Resources Conservation Service (NRCS) had not responded to the railroad's environmental report. OEA indicated that, because of the railroad's description of the limited nature of proposed salvaging activities, OEA does not anticipate that the proposed abandonment would affect resources protected under the Federal Farmland Protection Policy (7 U.S.C. § 4201) (FFPP). OEA noted that it sent a copy of the EA to NRCS for review and comment.

OEA also states in the EA that the U.S. Fish and Wildlife Service (USFWS), Region 4, had not responded in writing to the proposed abandonment or to the railroad's statement that it does not believe that the proposed abandonment would have any impact on endangered or threatened species or on any area designated as a critical habitat. OEA stated that, based on the information available to date, OEA is unable to determine whether any Federally listed threatened or endangered species exist in the area of the proposed abandonment, which includes forests potentially capable of supporting such species. However, due to the limited scope and temporary nature of the proposed salvage activities, OEA believes that any potential impacts to such species, if present, could be appropriately mitigated through consultation with USFWS pursuant to Section 7 of the Endangered Species Act (16 U.S.C. § 1536). Accordingly, OEA recommended that a condition be imposed requiring SCRF, prior to beginning salvage activities,

to: (1) contact USFWS in Charleston, S.C., to discuss potential impacts to any Federally listed endangered or threatened species; (2) report the results of this consultation to OEA in writing; and (3) should any potential impacts be identified, consult with OEA and USFWS to develop appropriate mitigation measures. OEA noted that it sent a copy of the EA to USFWS for review and comment.

Comments to the EA were due by January 27, 2012. In response to the EA, OEA received comments from USFWS and NRCS. USFWS states, in a letter received on January 19, 2012, that there are no Federally protected resources in the project area. Accordingly, OEA concludes that the condition recommended in the EA pertaining to USFWS consultations is no longer necessary. Therefore, the recommended condition in the EA will not be imposed.

NRCS states, in a letter received on January 17, 2012, that the project area is already in urban development or in use as an existing rail line right-of-way (ROW), and, therefore, the proposed abandonment would have no significant impact on prime or statewide important farmlands. Accordingly, OEA reaffirms its conclusion in the EA that the proposed abandonment would not affect resources protected under the FFPP. Therefore, no condition will be imposed.

There are no remaining environmental or historic preservation issues that have been raised by any party or identified by OEA. Therefore, a Finding of No Significant Impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the EA, OEA states that the ROW may be suitable for other public use following abandonment and salvage of the line. On January 12, 2012, the Town of Cheraw, S.C. (the Town), filed a request, which it amended on February 2, 2012, for the issuance of a notice of interim trail use (NITU) for the line to negotiate with SCRF for acquisition of the line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29. The Town has submitted a statement of willingness to assume full 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 the payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to the user's continuing to meet the responsibilities described above and to future reconstruction and reactivation of the ROW for rail service. In a response filed on February 2, 2012, SCRF states that it agrees to negotiate for interim trail use/rail banking with the Town.

Because SCRF agrees to the Town's request for a NITU and the Town's request complies with the requirements of 49 C.F.R. § 1152.29, 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, SCRF may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1). Use of the

ROW for trail purposes is subject to any future use of the property for restoration of railroad operations.

The Town also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the line. The Town requests that SCRF be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that SCRF be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and railroad ballast, for a 180-day period from the effective date of the abandonment exemption. The Town's justification for its request is that the rail corridor is one of the most historical in South Carolina and eventually will connect the Cheraw State Park in Cheraw to other state parklands on the Pee Dee River in Society Hill. The Town states that the corridor will make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans, including the expansion of public utilities (water and sewer) to residential areas in Chesterfield County not presently served. In addition, the Town notes that the corridor provides wildlife habitat and open space and its preservation as a recreational trail is consistent with those purposes. The Town states that the 180-day period is needed to complete its plan, begin negotiations with SCRF, and complete its due diligence before taking title to the corridor.

As an alternative to interim trail use under the Trails Act, the ROW 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) justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Because the Town has satisfied these requirements, a 180-day public use condition will be imposed, requiring SCRF to keep intact the ROW (including bridges, trestles, culverts, and railroad ballast) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the February 5, 2012 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. Although both conditions will be imposed at this time, the public use condition will expire on August 3, 2012 (180 days from the effective date of the exemption), while the trail use negotiating period will run 180 days from the service date of this decision and notice (until August 1, 2012). If a trail use agreement is reached on a portion of the ROW prior to August 3, 2012, SCRF must keep the remaining ROW intact for the remainder of the 180-day public use

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 ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, SCRF is not required to deal exclusively with the Town, but may engage in negotiations with other interested persons.

This decision and notice 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 January 2012 notice exempting the abandonment of the line described above is modified to the extent necessary to: (1) permit the Town to negotiate with SCRF for interim trail use/rail banking of the ROW for a period of 180 days from the service date of this decision and notice (until August 1, 2012; and (2) permit public use negotiations as set forth below for the ROW for a period of 180 days commencing from the February 5, 2012 effective date of the exemption (until August 3, 2012).
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, SCRF may discontinue service over the line. SCRF shall keep intact the right-of-way, including bridges, trestles, culverts, and railroad ballast, and shall refrain from disposing of the corridor (other than tracks, 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. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the ROW.
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 ROW.
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 ROW.
6. 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.

7. If an agreement for interim trail use/rail banking is reached by August 1, 2012, interim trail use may be implemented. If no agreement is reached by that time, SCRF may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1).

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

9. This decision is effective on its service date.

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