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SERVICE DATE - NOVEMBER 8, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-88 (Sub-No. 10X)

BESSEMER AND LAKE ERIE RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN ARMSTRONG AND BUTLER COUNTIES, PA

Decided: November 7, 2000

Bessemer and Lake Erie Railroad Company (B&LE) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances for B&LE to abandon and discontinue service over its line of railroad known as the Western Allegheny Branch, extending from Station 1400+80 East to End of Track, at Station 2460+98, in Armstrong and Butler Counties, PA, a distance of 20.1 miles (line). Notice of the exemption was served and published in the Federal Register on October 10, 2000 (65 FR 60246).

The exemption was scheduled to become effective on November 9, 2000, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Bradys Bend Corporation (Bradys Bend), to purchase a portion of the line, which has the effect of staying the effective date of the exemption for 10 days until November 19, 2000.¹ Bradys Bend simultaneously requested that B&LE provide it with the financial data and information prescribed in 49 CFR 1152.27(a). Under 49 CFR 1152.27(c)(2)(ii)(B), OFAs are due 30 days after publication of the notice of exemption in the Federal Register. On October 25, 2000, B&LE filed a request for a 60-day extension in accordance with 49 CFR 1152.27(c)(2)(ii)(D), to develop and submit the required information requested by Bradys Bend. Bradys Bend does not oppose the 60-day extension requested by B&LE.²

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 13, 2000, recommending that conditions be imposed on any grant of abandonment authority. Comments to the EA were due by October 30, 2000. No comments to the EA were received. Specifically, SEA recommended that B&LE: (1) consult with the U.S. Department of Agriculture, Natural Resources Conservation Service, and contact Dave Rupert, District Manager, Armstrong County Conservation District, Armsdale Administrative Building, RR#8, Box 294, Kittanning, PA 16201 [(724) 854-3425] prior to salvage operations, (2) consult with the U. S. Environmental Protection Agency-Region III prior

¹ See 49 CFR 1152.27(c)(2)(i).

² See Bradys Bend's letter filed on October 26, 2000.

to salvage operations, and (3) retain its interest in and take no steps to alter the historic integrity of the line in its entirety until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. The three conditions recommended in the EA will be imposed.

In the EA, SEA concluded that the right-of-way may be suitable for other public use following abandonment in this proceeding. By letter/petition filed October 17, 2000, the Pennsylvania Department of Conservation and Natural Resources (DCNR) filed a request for issuance of a notice of interim trail use (NITU) and rail banking 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 B&LE for acquisition of the right-of-way for use as a trail. DCNR submitted a statement indicating its willingness to assume full responsibility, to the extent allowable under Pennsylvania law, for interim trail use and rail banking in compliance with 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.

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).

DCNR has satisfied the requirements for both a public use condition and a NITU and, therefore, imposition of both would be appropriate commencing with the effective date of the exemption. However, an OFA takes priority over any requests for a NITU or for a public use condition. Therefore, issuance and effectiveness of a NITU and a public use condition will be delayed until the OFA process has been completed. If agreement is reached on sale or subsidy of the line, public use and trail use conditions would be unnecessary and unavailable. If no agreement is reached on the OFA, the appropriate decision and notice of interim trail use will be issued.

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 exemption of the abandonment of the rail line described above is subject to the conditions that B&LE: (1) consult with the U.S. Department of Agriculture, Natural Resources Conservation Service, and contact Dave Rupert, District Manager, Armstrong County Conservation District, Armsdale Administrative Building, RR#8, Box 294, Kittanning, PA 16201 [(724) 854-3425] prior to salvage operations, (2) consult with the U. S. Environmental Protection Agency-Region III prior to salvage operations, and (3) retain its interest in and take no steps to alter the historic integrity of the line in its entirety until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

3. The requests for issuance of a notice of interim trail use and for issuance of a public use condition are held in abeyance pending completion of the OFA process.

4. If the OFA process terminates, a decision effective on its service date will be issued to impose the notice of interim trail use and the public use condition.

5. B&LE is directed to provide Bradys Bend with the requested information to enable Bradys Bend to file an OFA. The deadline for Bradys Bend to file its OFA is extended to January 8, 2001.

6. The effective date of the exemption is postponed until January 18, 2001.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary