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SERVICE DATE – LATE RELEASE SEPTEMBER 20, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-477 (Sub-No. 3X)

OWENSVILLE TERMINAL COMPANY, INC.–ABANDONMENT EXEMPTION–IN
EDWARDS AND WHITE COUNTIES, IL, AND GIBSON AND POSEY COUNTIES, IN

Decided: September 20, 2005

By decision and notice of interim trail use or abandonment (NITU) served on February 25, 1998, the Board authorized a 180-day period for Owensville Terminal Company, Inc. (OTC) and Indiana Trails Fund, Inc. (ITF) to negotiate an interim trail use/rail banking agreement for a 22.5-mile rail line extending from milepost 205.0 at or near Browns, IL, to milepost 227.5 at or near Poseyville, IN, in Edwards and White Counties, IL, and Gibson and Posey Counties, IN. OTC and ITF reached an interim trail use agreement within that period.

On August 25, 2005, Browns, Grayville & Poseyville Railway Company (BG&P) filed a notice of exemption to acquire and operate the line in Browns, Grayville & Poseyville Railway Company–Acquisition and Operation Exemption–Owensville Terminal Company, Inc., STB Finance Docket No. 34750 (STB served Sept. 20, 2005) (BG&P Acquisition). The exemption became effective on September 1, 2005.

BG&P simultaneously has filed a petition to vacate the NITU pursuant to 49 CFR 1152.29(d)(3). BG&P seeks to reinstate active rail service on the line in accordance with section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).

Under the Trails Act, interim trail use is subject to the future restoration of rail service over the right-of-way. Upon agreement following the issuance of a NITU, the abandoning carrier generally transfers the right-of-way to the trail user, but retains the right to reinstitute rail service. Thus, an interim trail use arrangement is subject to being cut off at any time. It is well settled that the abandoning carrier's right to cut off the interim trail use arrangement and to reinstitute rail service can be conveyed to a third party. See, e.g., Iowa Power–Const. Exempt.–Council Bluffs, IA, 8 I.C.C.2d 858 (1990); N&W–Aban. St. Mary's & Minister in Auglaize County, OH, 9 I.C.C.2d 1015 (1993).

OTC and BG&P have entered into an agreement whereby, for value, OTC has conveyed its right to reinstitute rail service on the line to BG&P. BG&P may not operate a railroad over the right-of-way without first obtaining approval or an exemption. In this case, BG&P properly sought an exemption in BG&P Acquisition.

Where an application to construct (or acquire as is the case here) and operate a rail line over the right-of-way is authorized under 49 U.S.C. 10901 and 49 CFR 1150 Subpart D, or exempted under 49 U.S.C. 10502, the Board will reopen the abandonment proceeding and vacate the NITU. 49 CFR 1152.29(d)(3). BG&P has complied with the requirements of 49 CFR 1152.29(d)(3) regarding a request to vacate the NITU. Therefore, vacation of the NITU will be granted so that rail service can be restored on the line.

This action 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. The notice of interim trail use issued on February 25, 1998, is vacated.
3. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary