

SERVICE DATE - MARCH 20, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-406 (Sub-No. 14X)

CENTRAL KANSAS RAILWAY, L.L.C.—ABANDONMENT EXEMPTION—
IN SEDGWICK COUNTY, KS

Decided: March 18, 2002

By decision served on April 10, 2001, the Board granted Central Kansas Railway, L.L.C. (CKR) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903-05 to abandon a line of railroad extending between milepost 19.5 near Garden Plain, KS, and milepost 3.5 southeast of the grade crossing at McCormick Avenue in Wichita, KS, a distance of 16 miles in Sedgwick County, KS. The grant was made subject to conditions relating to the rerouting of overhead traffic, as well as to environmental, historic preservation, and standard employee protective conditions. Notice of the exemption was served and published in the Federal Register on January 10, 2001 (66 FR 2048). The exemption became effective on May 10, 2001.

On May 30, 2001, a decision and notice of interim trail use or abandonment (NITU)¹ was served, authorizing a 180-day period for Southwind Community Synergy, Inc. (SCS) to negotiate an interim trail use/rail banking agreement with CKR for a portion of rail line known as the Wichita-Garden Plain segment, extending from milepost 19.5 near Garden Plain, to milepost 9.62 near 135th Street West, a distance of 9.88 miles in Sedgwick County. The negotiating period expired on November 26, 2001.

By decision served on June 15, 2001, another NITU was served authorizing: (1) the City of Wichita (Wichita) to negotiate with CKR for a portion of the line between milepost 3.5 southeast of the grade crossing at McCormick Avenue and milepost 3.53 near West Street, and between milepost 4.53 near Hoover Road and milepost 8.62 near 119th Street in Wichita, a distance of 4.12 miles;² and (2) Sedgwick County (County) to negotiate with CKR for a portion

¹ See the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).

² By letter filed on December 17, 2001, Wichita gave notification that a trail use/rail banking agreement had been consummated with regard to that portion of the line located between milepost 4.53 and milepost 8.62, and that it has decided not to proceed with plans to develop a trail on the portion of the line between milepost 3.5 and milepost 3.53.

of the line between milepost 8.62 and milepost 9.62 near 135th Street near Wichita, a distance of 1.0 miles.³ The NITUs for Wichita and the County expired on December 11, 2001.

On December 26, 2001, SCS filed a request to extend its NITU negotiation period for an additional 180 days to enable it to continue its negotiations with CKR for use of the line as a trail. However, by letter filed January 29, 2002, CKR indicated that it is not willing to further negotiate with SCS for trail use. Because the Trails Act permits only voluntary interim trail use, the Board cannot grant the extension request. See Rail Abandonment–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).

On February 4, 2002, Wichita filed a request for issuance of a NITU for an additional segment of the line, the portion between milepost 9.62 near 135th Street and milepost 11.62 near 167th Street, a distance of 2.0 miles. Also, on that date, the City of Goddard, KS (Goddard) filed a request for issuance of a NITU for a portion of the line between milepost 11.62 and milepost 15.60 near 231st Street, a distance of 3.98 miles.

On March 7, 2002, the City of Garden Plain, KS (Garden Plain) filed a request for issuance of a NITU for a portion of the line between milepost 15.60 near 231st Street and milepost 19.5 near 295th Street, a distance of 3.9 miles.

Wichita, Goddard, and Garden Plain submitted statements of willingness to assume 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 payment of any and all taxes that may be levied or assessed against, 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.

CKR has indicated that it has not consummated the abandonment, and that it is willing to negotiate with Wichita, Goddard, and Garden Plain for interim trail use and rail banking for the relevant portions of the line.

Trail use requests may be accepted as long as the Board retains jurisdiction over the involved right-of-way⁴ and the carrier is willing to enter into negotiations. Inasmuch as CKR has

³ By letter dated November 13, 2001, the County gave notification that a trail use/rail banking agreement had been consummated on October 31, 2001, with regard to the portion of the line located between milepost 8.62 and milepost 9.62.

⁴ 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

(continued...)

not consummated the abandonment and is willing to negotiate with Wichita, Goddard, and Garden Plain for portions of the right-of-way, a NITU will be issued with the trail use negotiation period running 180 days from the service date of this decision. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CKR may fully abandon the relevant portions of the line, provided that the conditions imposed in the decision served April 10, 2001, are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

The Board received a statement from CKR on February 28, 2002, stating that the railroad intended to consummate the abandonment authorized in this proceeding on April 10, 2002. The consummation would not be effective as to the lines subject to an outstanding NITU or which are subject to a trail use/rail banking agreement negotiated pursuant to a NITU. Wichita and the railroad consummated a trail use agreement for the section between mileposts 4.53 and 8.62 on October 23, 2001. The County and the railroad consummated a similar agreement on October 31, 2001, covering the section of the line between mileposts 8.62 and 9.62. The remainder of the line, between milepost 9.62 and the abandoned line's connection with CKR's active line at milepost 19.5 near Garden Plain, is subject to outstanding NITUs.

The predicate for shielding rail lines from reversion pursuant to state law is that they be available—"rail banked"—for future rail use. Such future use cannot be assured if the connections between the rail banked lines and the national rail system are withdrawn from the Board's authority. The trail proponents and CKR should be advised that the validity of any rail banking agreement and any outstanding NITU could be called into question if the Board loses jurisdiction over the connection between the line segments covered by any such agreement or NITU and the national rail system.

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 request by Southwind Community Synergy, Inc. to extend its interim trail use negotiating period is denied.

⁴(...continued)

Railroad Company—Abandonment—in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

3. Upon reconsideration, the decision served on April 10, 2001, exempting the abandonment by CKR of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth above for a period of 180 days from the service date of this decision and notice (until September 16, 2002), subject to the conditions imposed in the April 10, 2001 decision.

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 right-of-way.

5. 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.

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. As to the relevant portions of the line, if an agreement for interim trail use/rail banking is reached during the 180-day period, interim trail use may be implemented. If no agreement is reached by that time, CKR may fully abandon those relevant portions.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary