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SERVICE DATE – LATE RELEASE OCTOBER 26, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1097X

PICKENS RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN PICKENS  
COUNTY, S.C.

Decided: October 26, 2012

This decision reopens this proceeding to impose environmental conditions, issue a notice of interim trail use (NITU), and impose a public use condition.

Pickens Railway Company (Pickens) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 8.5 miles of rail line between approximate milepost 0.0 (at or near Pickens) and the end of the line at approximate milepost 8.5 (at or near Easley), in Pickens County, S.C. (the line). Notice of the exemption was served and published in the Federal Register on September 27, 2012 (77 Fed. Reg. 59,451) (September 2012 notice). The exemption is scheduled to become effective on October 27, 2012.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on October 2, 2012. In the EA, OEA states that the National Geodetic Survey (NGS) notes that there are six geodetic survey markers located in the project area. Accordingly, OEA recommends a condition requiring Pickens to consult with NGS and to notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers located in the project area.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the project area. The Database indicated that the Eastern Band of Cherokee Indians of North Carolina may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (ROW) of the proposed abandonment. Accordingly, OEA states that it was sending a copy of the EA to this tribe for review and comment.

Comments on the EA were due by October 17, 2012. On October 12, 2012, Junius R. Smith, a private citizen, filed comments on behalf of 115 property owners who live in the vicinity of the line. Mr. Smith states that the conversion of the line into a trail would have a detrimental impact on the quality of life of adjacent property owners, who have reversionary property rights. In particular, Mr. Smith asserts that the conversion to a trail would harm the tranquility and welfare of the property owners by subjecting them to noise and inconvenience resulting from trail use and that Pickens did not properly inform property owners of the proposed abandonment and the proposed conversion to interim trail use. He also raises concerns about

possible chemical contamination along the ROW due to leakage and spills of lubricants and fuels during past rail operations and from the application of herbicides, and about various alleged road closures that would result from the abandonment. On October 16, 2012, Pickens filed a reply.

On October 22, 2012, OEA issued a Final EA. In response to Mr. Smith's concerns about possible contamination along the ROW, OEA notes that it has been unable to independently verify any instances of chemical contamination in the area. But, as noted in the EA, the South Carolina Department of Health and Environmental Control (DHEC) requested that Pickens and its contractors implement appropriate controls and procedures during salvage operations to minimize impacts to adjacent properties. Accordingly, and in recognition of public concern regarding possible chemical contamination, OEA recommends that a new condition be imposed requiring Pickens, prior to commencing salvage activities, to consult with DHEC regarding salvage and abandonment procedures and to comply with all reasonable requirements to ensure minimal adverse environmental impact to adjacent properties. In response to the concerns expressed by Mr. Smith regarding road closures, OEA clarifies that the proposed abandonment, if implemented, should not result in any road closures; rather, it would result in the elimination of 16 public and 11 private road *crossings*, the elimination of which generally is considered a public safety benefit.

In response to Mr. Smith's concern regarding notice to landowners, Pickens reconfirms that notice of the proposed abandonment was published in the Greenville News and states that a representative of that newspaper advised Pickens that it is a newspaper of general circulation in several counties, including Pickens County. Therefore, the publication satisfies the notice requirement of 49 C.F.R. § 1105.12; the Board's rules do not require certified mail notification to landowners.

In the EA, OEA states that the ROW may be suitable for other public use following abandonment and salvage of the line. On September 27, 2012, the City of Easley, S.C., and the City of Pickens, S.C. (collectively, trail sponsors), jointly filed a request for the issuance of a NITU for the line to permit them to negotiate with Pickens 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. On October 16, 2012, OEA received a joint comment from Upstate Forever, a local non-profit group, the YMCA of Pickens, and the Greater Easley Chamber of Commerce in support of the conversion of the line into a recreational trail under the Trails Act. As noted above, Mr. Smith, on behalf of various local landowners, opposes use of the ROW as a trail and asks that permission for such use be denied.

The Board's role under the Trails Act is largely ministerial, see Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001) (CART), and the trail use program is voluntary and consensual between the railroad and the trail user, see Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). The Board has no involvement in the negotiations between the railroad and the potential trail sponsor and does not approve or set the

terms of trail use/rail banking agreements. Further, the Board does not conduct an environmental review of a potential conversion to interim trail use/rail banking because of its limited ministerial role under the Trails Act. CART, 267 F.3d at 1151-54.

Pursuant to 49 C.F.R. § 1152.29, the trail sponsors have submitted a statement of their willingness to assume financial responsibility for the line and have acknowledged that the use of the ROW for trail purposes is subject to possible future reconstruction and reactivation of the ROW for rail service. In a letter filed on October 9, 2012, Pickens agrees to negotiate for interim trail use/rail banking for the line.

In light of the Board's limited, largely ministerial role under the Trails Act, and because Pickens agrees to the trail sponsors' request for a NITU and the request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued for the line. The parties may negotiate an agreement for the line during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within ten days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, Pickens may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the ROW for trail purposes is subject to possible future reconstruction and reactivation of the ROW for rail service.

The trail sponsors also have requested imposition of a public use condition under 49 U.S.C. § 10905 for the line. They request that Pickens be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that Pickens 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 trail sponsors' justification for the request is that the rail corridor, which connects the City of Pickens with the City of Easley, would make an excellent recreational trail, and the structures such as bridges, trestles, culverts and ballast have considerable value for trail purposes. In addition, they state that the corridor provides wildlife habitat and open space and its preservation as a recreational trail is consistent with those purposes. The trail sponsors state that the 180-day period is needed to complete its rail plan, begin negotiations with Pickens, and complete its due diligence before taking title to the line.

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 trail sponsors have satisfied these requirements, a public use condition will be imposed on the line requiring Pickens to keep intact the ROW (including bridges, trestles, culverts and railroad ballast) and to refrain from disposing of the corridor (except the tracks, ties, and signal equipment), for a 180-day period beginning on the October 27, 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 April 25, 2013 (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 April 24, 2013). If a trail use agreement is reached for the line prior to April 25, 2013, Pickens 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, Pickens is not required to deal exclusively with the trail sponsors but may engage in negotiations with other interested persons.

For the foregoing reasons, the conditions recommended by OEA in the EA and the new condition recommended by OEA in the Final EA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, 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 September 2012 notice is modified to the extent necessary to: (1) permit the trail sponsors to negotiate with Pickens for interim trail use/rail banking of the line for a period of 180 days from the service date of this decision and notice (until April 24, 2013); and (2) permit public use negotiations for the line as set forth below for a period of 180 days commencing from the October 27, 2012 effective date of the exemption (until April 25, 2013). In addition, the exemption is subject to conditions requiring Pickens to: (3) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers located in the project area; and (4) prior to commencement of salvage activities, consult with DHEC regarding salvage and abandonment procedures and comply with all reasonable requirements to ensure minimal adverse environmental impact to

adjacent properties.

3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, Pickens may discontinue service over the line. Pickens shall keep intact the ROW, including bridges, trestles, culverts and railroad ballast, and shall refrain from disposing of the line, except the 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 line.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsors to assume, for the term of the agreement, full responsibility for: (i) managing the ROW; (ii) any legal liability arising out of the transfer or use of the ROW (unless the trail sponsors are immune from liability, in which case they need only indemnify the railroad against any potential liability); and (iii) 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 possible future reconstruction and reactivation of the ROW for rail service and to the trail sponsors' continuing to meet their responsibilities described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached, the parties shall jointly notify the Board within ten days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsors intend to terminate trail use on all or any portion of the line covered by the interim trail use agreement, they must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by April 24, 2013, interim trail use may be implemented. If no agreement is reached, Pickens may fully abandon the line.

9. This decision and notice is effective on its service date.

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