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SERVICE DATE – MAY 14, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 682X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN GREENBRIER
AND FAYETTE COUNTIES, WV

Decided: May 13, 2008

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 16.7-mile line of railroad on CSXT's Southern Region, Huntington-East Division, Sewell Subdivision, between milepost CAF 27, near Rainelle, and milepost CAF 43.7, near Nallen, in Greenbrier and Fayette Counties, WV. Notice of the exemption was served and published in the Federal Register on April 3, 2008 (73 FR 18322-23). The exemption was scheduled to become effective on May 3, 2008, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by April 14, 2008.

On April 1, 2008, Seaside Holdings, Inc. (Seaside) filed a formal expression of intent to file an OFA to purchase CSXT's line proposed for abandonment. This filing automatically stayed the effective date of the exemption for 10 days, until May 13, 2008.¹ In the filing, Seaside requested that CSXT provide it with the information set forth in 49 CFR 1152.27(a), and, in addition, specific information not included in that section.

By petition filed on April 14, 2008, Seaside requested that the time period for it to submit an OFA be tolled, until 10 days after it has received the data requested from CSXT. By letter filed on April 15, 2008, CSXT stated that it does not oppose tolling of the effective date of the exemption, so long as the information required to be provided to Seaside is limited to the information required by 49 CFR 1152.27(a).²

In a decision served on April 18, 2008, the Board tolled the time period for Seaside to file an OFA, until 10 days after CSXT notifies the Board in writing that it has provided Seaside with the information set forth in section 1152.27(a). The Board postponed the effective date of the exemption until 10 days after the due date for the filing of an OFA.

¹ See 49 CFR 1152.27(c)(2)(i).

² CSXT states that responsive information will be forthcoming as soon as the appraisal of the line is completed. The appraisal is expected by June 16, 2008.

On April 18, 2008, the Greenbrier County Commission, and on April 21, 2008, the Fayette County Commission (collectively, the Counties)³ late-filed requests for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29,⁴ as well as requests for the issuance of a 180-day public use condition under 49 U.S.C. 10905. In revising its abandonment rules in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings made after the due date when good cause is shown. Because there is no indication that the Counties' late-filed requests will prejudice any party, they will be accepted.

The Counties request that CSXT be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, for a 180-day period from the effective date of the abandonment exemption. The Counties explain that the rail corridor is located along the Meadow River, a scenic river, and will connect to the Gauley River Recreational Area. The Counties state that the corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. The counties state that they need the 180-day period to assemble or review title information, complete a trail plan, or commence negotiations with the carrier.

The Counties have submitted statements of willingness to assume financial 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 potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way as required by 49 CFR 1152.29, and has acknowledged that use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. In a response filed on April 22, 2008, CSXT states that it is willing to negotiate with the Counties for interim trail use.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use 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). The Counties have satisfied these requirements for both a public use condition and a NITU, and therefore, imposition of both would be appropriate commencing with the

³ Each county purports to also file in collaboration with the other county.

⁴ The April 3, 2008, notice provided that any request for trail use/rail banking was due by April 14, 2008.

effective date of the exemption. However, an OFA takes priority over the requests for a NITU or for a public use condition. Therefore, issuance and effectiveness of a NITU and public use condition will be delayed until the OFA process has been completed. If an agreement is reached on sale of the line for continued rail service, 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 or abandonment establishing the 180-day negotiating period will be issued.

This decision 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 requests for issuance of a notice of interim trail use and a public use condition are held in abeyance pending completion of the OFA process.
3. If the OFA process terminates, a decision effective on its service date will be issued to impose the interim trail use and public use conditions.
4. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary