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SERVICE DATE – JUNE 10, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 259X)

TENNESSEE RAILWAY COMPANY–ABANDONMENT EXEMPTION–  
IN ANDERSON AND CAMPBELL COUNTIES, TN

Decided: June 9, 2005

Tennessee Railway Company (TNR), a wholly owned subsidiary of Norfolk Southern Railway Company (NS), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon a 14.04-mile line of railroad between milepost TE-27.96 at Nick’s Creek and milepost TE-42.00 at Devonia, in Anderson and Campbell Counties, TN. Notice of the exemption was served and published in the Federal Register on January 19, 2005 (70 FR 3103). The exemption was scheduled to become effective on February 18, 2005, 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 January 31, 2005.

On January 31, 2005, the National Coal Corporation (NCC) filed a formal expression of intent to file an OFA, automatically staying the effective date of the exemption until February 28, 2005. On February 1, 2005, NCC requested that NS, on behalf of TNR, provide the information prescribed in 49 CFR 1152.27(a). NCC also asked that the Board set the due date for an OFA 30 days after the carrier provides the requested information. In a response filed on February 15, 2005, TNR objected to NCC’s request. TNR also asked for an additional 60 days to enable it to conduct an appraisal to determine the net liquidation value of the line.

In a decision served on February 22, 2005, the Board, among other things, required that TNR provide the requested information to NCC, within 60 days, to enable the offeror to submit an OFA. The decision also set the due date for an OFA at 30 days after TNR provided the information to NCC.

On May 20, 2005, NCC timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the 14.04-mile line segment. In a decision served on May 25, 2005, NCC was found financially responsible and the effective date of the exemption authorizing abandonment was postponed to permit the OFA process to proceed.

On May 31, 2005, the Cumberland Trail Conference (CTC) filed a request 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 for imposition of a public use condition under 49 U.S.C. 10905. CTC's request covers the instant line segment and a connecting line segment which is the subject of a related proceeding, STB Docket No. AB-290 (Sub-No. 260X).<sup>1</sup> As to the instant line segment, CTC's request is late-filed.<sup>2</sup> However, 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 CTC's late-filed request will prejudice any party, it will be accepted.

CTC requests that TNR be prohibited from disposing of the corridor for a 180-day period from the effective date of the abandonment exemption. CTC explains that this corridor would make an excellent recreational trail, and conversion of the property to trail use is in accordance with local plans. According to CTC, it needs the full 180-day period to assemble and review title information, complete negotiations with TNR, develop a trail plan, and gain necessary board approvals.

CTC also submitted a statement 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 any potential liability), and for 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. By facsimile received June 6, 2005, TNR states that it agrees to the issuance of a NITU.

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). CTC 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 the requests for a NITU or for a public use condition. Therefore, issuance and

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<sup>1</sup> CTC's request for the issuance of a NITU and for imposition of a public use condition over the other portion of the line will be handled in a subsequent decision in that proceeding.

<sup>2</sup> The January 19 notice concerning the instant line segment provided that any request for trail use/rail banking was due by January 31, 2005, and that any request for a public use condition was due by February 8, 2005.

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 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 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. The decision is effective on its service date.

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

Vernon A. Williams  
Secretary