

SERVICE DATE - MAY 29, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE

STB Docket No. AB-468 (Sub-No. 4X)

PADUCAH & LOUISVILLE RAILWAY, INC.—ABANDONMENT EXEMPTION—
IN HOPKINS COUNTY, KY

Decided: May 23, 2001

Paducah & Louisville Railway, Inc. (P&L) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a line of railroad between milepost 154.5, near St. Charles, and milepost 159.6, near Ilsley, a distance of approximately 5.1 miles in Hopkins County, KY (line). Notice of the exemption was served and published in the Federal Register on April 6, 2001 (66 FR 18355). The exemption became effective on May 8, 2001.¹

By petition filed May 11, 2001, Hopkins County Fiscal Court (HCFC) late-filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905,² in order to negotiate with P&L for acquisition of the right-of-way for use as a recreational trail.³ HCFC requests that P&L be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that

¹ By decision served May 7, 2001, the exemption was made subject to the condition that P&L retain its interest in the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. That condition was removed by decision served May 16, 2001.

² The Board's Section of Environmental Analysis (SEA) served an environmental assessment on April 11, 2001, which indicated that the right-of-way may be suitable for other public use following abandonment.

³ The April 6, 2001 notice of exemption provided that trail use/rail banking requests had to be filed by April 16, 2001, and that requests for public use conditions had to be filed by April 26, 2001. However, 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 after the due date when good cause is shown. Because there is no indication that HCFC's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

P&L be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. HCFC states that it needs the full 180-day period because it has not had an opportunity to complete a trail plan or commence negotiations with P&L. It 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 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. By letter filed May 18, 2001, P&L advised the Board that it was willing to negotiate with P&L.⁴

Because HCFC's request complies with the requirements of 49 CFR 1152.29 and P&L is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, P&L may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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). HCFC has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the 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. Here, however, while both conditions will be imposed at this time, the public condition will expire on November 4, 2001,⁵ while the trail use negotiations period will run from 180 days from

⁴ P&L requests that HCFC contact Terry Outland, at (270) 444-4430, to commence the negotiation process.

⁵ Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are
(continued...)

the service date of this decision (until November 25, 2001). If a trail use agreement is reached on a portion of the right-of-way, P&L must keep the remaining portion of the right-of-way intact for the remainder of the period for 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 right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, P&L is not required to deal exclusively with HCFC, but may engage in negotiations with other interested persons.

As conditioned, 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 late-filed request for a NITU under 16 U.S.C. 1247(d) and a public use condition under 49 U.S.C. 10905 is accepted.
3. The notice of exemption served and published in the Federal Register on April 6, 2001, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below.
4. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision, P&L may discontinue service, and salvage track and related materials. P&L shall otherwise keep intact the right-of-way underlying the tracks, including bridges trestles, culverts and tunnels, for a period of 180 days from the effective date (until November 4, 2001), 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 November 4, 2001, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
5. 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(...continued)

proposed for abandonment and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.

7. 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.

8. If an agreement for interim trail use/rail banking is reached by November 25, 2001, interim trail use may be implemented. If no agreement is reached by that time, P&L may fully abandon the line.

9. This decision is effective on its service date.

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

Vernon A. Williams
Secretary