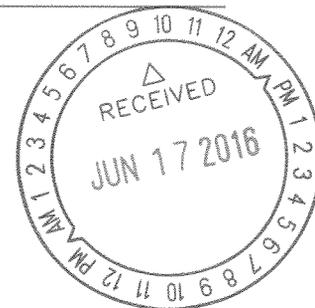


SALMONBERRY TRAIL INTERGOVERNMENT AGENCY
725 Summer St. N.E., Suite C
Salem, Oregon 97301

ENTERED
Office of Proceedings
June 17, 2016
Part of
Public Record



June 7, 2016

Ms. Cynthia Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street
Washington, DC 20024

RE: ICC Finance Docket No. 31676
Port of Tillamook Bay Railroad – Modified Rail Certificate
Notice of Intent to Partially Terminate (Abandon) Service

Dear Ms. Brown:

This request is filed on behalf of the Salmonberry Trail Intergovernmental Agency (STIA), which is an intergovernmental agency interested in supporting local economies, conservation and outdoor recreation opportunities which is hereinafter referred to as ‘proponent’.

While not taking a position on the merits of this abandonment, proponent requests issuance of a Public Use Condition, as well as a Certificate or Notice of Interim Trail Use for that portion of the Port of Tillamook Bay Railroad (POTB), between Milepost 775.01 near Banks, Washington County, Oregon, and Milepost 856.06 near Tillamook, Tillamook County, Oregon.

Proponent notes that the Board's predecessor, the Interstate Commerce Commission, desired to preserve the future possibility of public use by imposing conditions in previous decisions involving the subject line. In Finance Docket No. AB-339X, *Port of Tillamook Bay—Discontinuance of Trackage Rights Exemption—In Washington and Tillamook Counties, OR.*, served October 22, 1990, (copy attached) the Commission was petitioned by the Rails-to-Trails Conservancy and the Oregon Parks and Recreation Department to revisit an earlier AB-339X decision and impose an advance notice condition for the benefit of trail-use advocates. In the October 22, 1990, decision it was noted “that the Commission has held that it retains sufficient jurisdiction to entertain requests under the Trails Act when modified rail certificate service is terminated. They [the petitioners] request 60 days' advance notice by POTB of termination of rail service under the modified rail certificate in order to ensure that the Commission does not lose jurisdiction to entertain a Trails Act request. Under the circumstances, the requested relief is in effect an extension or continuation of the relief granted in Tillamook Branch Abandonment.¹ A condition requiring 60 days' notice to petitioners will be imposed.”

A. Public Use Condition

Proponent requests the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except of public use on reasonable terms. The justification for this condition is that the corridor will make an excellent recreational trail connecting the coast with the urban Portland area. The railroad is along the Salmonberry River and conversion of the property to trail use is in accordance with local planning efforts. The corridor provides important wildlife habitat and its preservation as a recreational trail is consistent with that end. The time period sought is 180 days from the effective date of the abandonment authorization. Proponent needs this much time because we have not had an opportunity to commence negotiations with the carrier.

2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

B. Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, proponent also makes the following request:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29, the Salmonberry Trail Intergovernmental Agency is willing 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 the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by the Port of Tillamook Bay.

The property, known as the Port of Tillamook Bay railroad extends from railroad milepost 775.01 near Banks, Washington County, Oregon to railroad milepost 856.08 near Tillamook, Tillamook County, Oregon a distance of 81.07 miles in Tillamook and Washington Counties, Oregon. The right-of-way is part of a line of railroad proposed for termination (abandonment) of service in ICC Finance Docket No. 31676, STB-filed May 26, 2016. A map depicting the right-of-way is attached.

The Salmonberry Trail Intergovernmental Agency acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon Port of Tillamook Bay, 4000 Blimp Blvd, Tillamook, OR 97141, by U.S. Mail, postage prepaid, first class, on [date].

With respect to the filing fee, the STIA is a local government entity. It is our understanding that this filing fee will likely be waived pursuant to the provisions of 49 C.F.R. 1002.2(e)(1), which allows for a waiver of such fees for local government entities.

Respectfully submitted,



Doug Decker and Lisa Sumption, Co-Chairs
On behalf of Salmonberry Trail Intergovernmental Agency

Attachments: Finance Docket No. AB-339X, *Port of Tillamook Bay—Discontinuation of Trackage Rights exemption—In Washington and Tillamook Counties, OR*

Map

¹ See Docket No. AB-12 (Sub-No. 108), *Southern Pacific Transportation Company—Abandonment—Tillamook Branch in Washington and Tillamook Counties, OR*, served August 28, 1986.

SERVICE DATE

OCT 22 1990

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INTERSTATE COMMERCE COMMISSION

DECISION

Docket No. AB-339X¹

PORT OF TILLAMOOK BAY--DISCONTINUANCE OF TRACKAGE RIGHTS
EXEMPTION--IN WASHINGTON AND TILLAMOOK COUNTIES, OR

Decided: October 15, 1990

In a decision served September 18, 1990,² the Commission granted the Port of Tillamook Bay (POTB) an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-10904 to discontinue local trackage rights over a rail line formerly owned by Southern Pacific Transportation Company (SP) and now owned by POTB. The line extends between milepost 770.5, at or near Schefflin, in Washington County, OR, and milepost 856.08, at or near Tillamook, in Tillamook County, OR. The exemption is scheduled to become effective October 18, 1990.

An agreement between POTB and SP granting the Port of Tillamook Bay Railroad (the same entity as POTB) local trackage rights over SP's line between milepost 765.5, at or near Hillsboro, OR, and milepost 856.08 was the subject of a notice of exemption in Finance Docket No. 30826, Port of Tillamook Bay Railroad--Trackage Rights--Southern Pacific Transportation Company (not printed), served and published May 21, 1986 (51 FR 18674), (PTBR Trackage Rights).

In Docket No. AB-12 (Sub-No. 108), Southern Pacific Transportation Company--Abandonment--Tillamook Branch in Washington and Tillamook Counties, OR (not printed), served August 28, 1986, (Tillamook Branch Abandonment) the Commission granted SP authority to abandon the segment of the Tillamook Branch line involved here and allowed POTB to operate the line for at least 2 years to determine the viability of operations over the line prior to a public agency acquiring the line from SP. Tillamook Branch Abandonment also required notice of POTB's trackage rights discontinuance to be given Rails-to-Trails Conservancy (RTC) and another interested person in order to allow them to submit an appropriate request for trails use under the provisions of 16 U.S.C. 1247(d) (Trails Act) or a request for a public use condition.

POTB acquired the line on February 1, 1990, and later filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23. Finance Docket No. 31676, Port of Tillamook Bay Modified Rail Certificate (not printed), notice served and published June 1, 1990 (55 FR 22415), corrected notice served and published June 4, 1990 (55 FR 22863), (POTB Modified Rail Certificate). In POTB Modified Rail Certificate it was noted that the trackage rights granted in PTBR Trackage Rights apparently were intended to be replaced by the modified rail certificate. As a modified certificate holder has no outstanding common carrier obligation, it was suggested that POTB seek authority to discontinue the trackage rights arrangement to ensure that the common carrier obligation that attaches to it is extinguished. The petition for exemption here was filed in response to that suggestion.

¹ A copy of this decision shall be filed under Finance Docket No. 31676.

² Notice was published in the Federal Register on the same date. 55 FR 38414.

Docket No. AB-339X

By comment filed October 10, 1990, RTC and Oregon State Parks and Recreation Division (OSPARD) request advance notice should POTB abandon operations under the modified rail certificate. RTC and OSPARD point out that POTB is only required to notify shippers of an impending cancellation of service.³ They note that the Commission has held that it retains sufficient jurisdiction to entertain requests under the Trails Act when modified rail certificate service is terminated.⁴ They request 60 days' advance notice by POTB of termination of rail service under the modified rail certificate in order to ensure that the Commission does not lose jurisdiction to entertain a Trails Act request.

Under the circumstances, the requested relief is in effect an extension or continuation of the relief granted in Tillamook Branch Abandonment. A condition requiring 60 days' notice to petitioners will be imposed.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The exemption granted by decision served on September 18, 1990, exempting the discontinuance of trackage rights described above, is modified by imposing the condition that the Port of Tillamook Bay, before it terminates service under the modified rail certificate noticed in Finance Docket No. 31676, provide to the Rails-to-Trails Conservancy and the Oregon State Parks and Recreation Division the same 60 days' notice of termination required to be given shippers by 49 CFR 1150.24.
3. This decision is effective on its service date.

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

(SEAL)

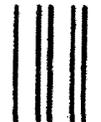
Sidney L. Strickland, Jr.
Secretary

³ 49 CFR 1150.24 requires an operator under a modified rail certificate to give 60 days' notice of termination (a) by filing with the State and the Commission, and (b) by mailing to all persons that have used the line within the 6 months preceding the date of the notice.

⁴ See Finance Docket No. 30724 (Sub-No. 1), Wisconsin and Calumet Railroad Company, Inc.--Notice of Interim Trail Use and Termination of Modified Certificate (not printed), served August 8, 1989.

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