

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

April 9, 2018

245439

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
April 9, 2018
Part of
Public Record

Re: **Docket No. AB-70 (Sub-No. 6X)**
Florida East Coast Railway, L.L.C. -- Abandonment
Exemption-- In Miami-Dade County, Florida

Dear Ms. Brown:

Pursuant to 49 C.F.R. §§ 1152.29(d)(2) and (f), Florida East Coast Industries, LLC ("FECI") and FECI LT1 LLC ("LT1") jointly request that: (1) the notice of interim trail use ("NITU") served on November 21, 2016 in the above-captioned proceeding involving a former Florida East Coast Railway, L.L.C. ("FEC") rail line between mileposts LR 11+3989 and LR 13+0000 in Miami-Dade County, Florida (the "Line") be vacated; (2) a replacement NITU be issued that (a) substitutes LT1 for FECI as the trail sponsor and (b) covers the portion of the Line between mileposts LR 11+3989 and LR 12+4502.52 (the "Railbanked Segment"); and (3) FEC's exemption authority to abandon the remainder of the Line, between mileposts LR 12+4502.52 and LR 13+0000 (the "Remaining Segment") be reinstated, subject to satisfaction of an outstanding Section 106 historic preservation condition.

By notice served and published in the *Federal Register* on February 10, 2016, 81 Fed. Reg. 7185, FEC was granted authority to abandon the Line. By decision served March 10, 2016, the Board imposed two environmental conditions on the abandonment, including a Section 106 historic preservation condition. The Line was subsequently railbanked under 49 C.F.R. § 1152.29 pursuant to the NITU, which was sought and obtained by FECI.

The parties wish to terminate trail use/railbanking on the Remaining Segment of the Line, and to substitute LT1 (an FECI affiliate) for FECI as the trail sponsor on the Railbanked Segment of the Line. Accordingly, FECI/LT1 seek vacation of the existing NITU for the Line and the issuance of a replacement NITU in LT1's name for the Railbanked Segment of the Line, effective as of April 30, 2018. A copy of the existing NITU and of LT1's Statement of Willingness to Assume Financial Responsibility are attached. LT1 acknowledges that interim use of the Railbanked Segment right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown

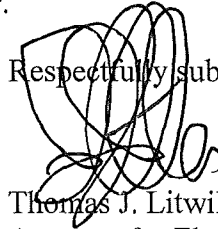
April 9, 2018

Page 2

FEC will separately indicate its concurrence to the issuance of the requested replacement NITU. FECI/LT1 understand that, upon vacation of the existing NITU, the Board will reinstate FEC's abandonment exemption authority with respect to the Remaining Segment, such that FEC may fully abandon that segment subject to any outstanding conditions, including the Section 106 condition. *See Illinois Central Railroad Company -- Abandonment Exemption -- In St. Tammany Parish, LA*, Docket No. AB-43 (Sub-No. 154X) (STB served August 11, 2017 and October 3, 2017).

Please feel free to contact me if you have any questions regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Florida East Coast
Industries LLC and FECI LT1 LLC

TJL:tl

Attachments

cc: Robert B. Ledoux, Esq., FEC

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under 16 U.S.C.1247(d) and 49 C.F.R. 1152.29 with respect to the former right-of-way of Florida East Coast Railway, L.L.C. ("FEC") between mileposts LR 11+3989 and LR 12+4502.52 in Miami-Dade County, Florida, FECI LT1 LLC ("LT1") is willing to assume full responsibility for: (1) managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way, and (3) the payment of any and all taxes that may be levied or assessed against the right-of-way.

LT1 acknowledges that the use of the right-of-way is subject to LT1 continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

SERVICE DATE – NOVEMBER 21, 2016

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 70 (Sub-No. 6X)

FLORIDA EAST COAST RAILWAY, L.L.C.—ABANDONMENT
EXEMPTION—IN MIAMI-DADE COUNTY, FLA.

Decided: November 18, 2016

Florida East Coast Railway, L.L.C. (FEC) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 1.21-mile rail line on its South Little River Branch Line, between mileposts LR 11+3989 and LR 13+0000 (the Line), in Miami-Dade County, Fla. Notice of the exemption was served and published in the Federal Register on February 10, 2016 (81 Fed. Reg. 7,185). The exemption became effective on March 11, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on February 16, 2016, solicited comments, and issued a Final EA. OEA recommended two conditions in the Final EA, and the Board imposed those conditions in a decision served on March 10, 2016.¹

In the EA, OEA stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On November 1, 2016, Florida East Coast Industries, LLC (FECI), filed late a request for the issuance of a notice of interim trail use (NITU) for the right-of-way, to permit FECI to negotiate with FEC for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.² Pursuant to 49 C.F.R. § 1152.29, FECI has submitted a statement of its willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the

¹ The conditions imposed in the March 10, 2016 decision remain in effect.

² The Board's February 10, 2016 notice provided that requests for interim trail use/rail banking were to be filed by February 22, 2016. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation 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 requests after the due date when good cause is shown. Because there is no indication that FECI's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Ry.—Aban. Exemption—in Starke Cty., Ohio, AB 227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

right-of-way for rail service. By response filed on November 1, 2016, FEC indicated its willingness to negotiate with FECI for interim trail use.

Because FECI's request complies with the requirements of 49 C.F.R. § 1152.29 and FECI is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way 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 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, FEC may fully abandon the Line, subject to any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. FECI's late-filed request for a NITU under 16 U.S.C. § 1247(d) is accepted.
3. Upon reconsideration, the February 10, 2016 notice exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit FECI to negotiate with FEC for trail use for a period of 180 days from the service date of this decision and notice, until May 20, 2017.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it 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 right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use

agreement, 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 May 20, 2017, for the right-of-way, interim trail use may be implemented. If no agreement is reached, FEC may fully abandon the Line, subject to any outstanding conditions.

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

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.