

SERVICE DATE – OCTOBER 28, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 406 (Sub-No. 5X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY—ABANDONMENT
EXEMPTION—IN CLARK AND COMANCHE COUNTIES, KAN.

Digest:¹ The Board vacates a notice of interim trail use or abandonment for the right-of-way of a rail line in Kansas, waives the requirement to file a notice of consummation of abandonment, and declares the line abandoned and no longer part of the interstate rail network.

Decided: October 27, 2020

On February 20, 1996, Central Kansas Railway, Limited Liability Company (CKR), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 30.3-mile rail line known as the Englewood Subdivision, extending between milepost 136, at or near Protection, and milepost 166 plus 1,846 feet, at or near Englewood, in Clark and Comanche Counties, Kan. (the Line). Notice of the exemption was served and published in the Federal Register on March 11, 1996 (61 Fed. Reg. 9743), and the exemption became effective on April 10, 1996. By decision served April 4, 1996, the exemption was made subject to a condition that, prior to commencing salvage operations, CKR shall consult with the Kansas Department of Health and Environment regarding certification requirements.

On July 2, 1997, Iowa Trails Council (ITC) requested issuance of a notice of interim trail use or abandonment (NITU) for the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.² Also on July 2, 1997, CKR filed a letter consenting to the issuance of a NITU and noting that ITC and CKR had reached an interim trail use/rail banking agreement. By decision served July 11, 1997, a NITU was issued. By letter filed July 13, 1998, OmniTRAX, Inc. (OmniTRAX), at that time the corporate parent of CKR, advised the Board that the Line's right-of-way was conveyed to ITC pursuant to the Trails Act effective October 1, 1997.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² An earlier NITU was issued on May 8, 1996, permitting another party to negotiate with CKR for interim trail use/rail banking. However, following two extensions, that NITU expired on July 2, 1997.

On February 10, 2000, at the joint request of ITC and Short Grass Prairie Trail, Inc. (SGPT), a replacement NITU was issued substituting SGPT as the trail sponsor. On June 10, 2013, at the joint request of SGPT and Sunflower Rail-Trails Conservancy, Inc. (SRTC), a replacement NITU was issued substituting SRTC as the trail sponsor.

On June 8, 2020, SRTC filed a request pursuant to 49 C.F.R. § 1152.29(d)(2) that the Board vacate the NITU, effective on the date of the Board's decision. On July 22, 2020, the Board sought additional information from, among others, OmniTRAX and SRTC concerning who currently owns the right-of-way and whether CKR still exists. See Cent. Kan. Ry.—Aban. Exemption—in Clark & Comanche Cntys., Kan., AB 406 (Sub-No. 5X) (STB served July 22, 2020).³

On August 7, 2020, OmniTRAX Holdings Combined, Inc. (OTH), and OmniTRAX⁴ filed a joint reply, stating that CKR was a holding of OmniTRAX until 2009, and that under the terms of the interim trail use/rail banking agreement between CKR and ITC, “CKR transferred all of its title and interest in the Line's right-of-way to ITC under a donative quitclaim deed, subject only to CKR's retention of an obligatory common carrier reactivation right.” (OTH/OmniTRAX Reply 1.) According to OTH and OmniTRAX, OmniTRAX suspects, but has not been able to ascertain, that each subsequent trail sponsor acquired the same rights and interests in the right-of-way that CKR originally conveyed to ITC. (Id. at 2.)

OTH and OmniTRAX further state that CKR was dissolved in 2009 and no longer exists, and that OTH has no record that CKR's right to reactivate service on the Line was ever conveyed to anyone outside of the OmniTRAX corporate family. (Id.) Accordingly, OTH and OmniTRAX believe that CKR's right to reactivate service most likely fell to OmniTRAX, CKR's corporate parent at the time. (Id.) OTH and OmniTRAX state that, to the extent OTH might have assumed CKR's right to reactivate service, OTH has no interest in reactivating service on the Line, and that OTH and OmniTRAX both desire that the Line be fully abandoned and the right to reactivate service extinguished. (Id.)

On August 11, 2020, SRTC commented that a review of its records did not reveal who owns the Line or whether CKR still exists. (SRTC Comment 1.) SRTC states that it does have a quitclaim deed for the Line from SGPT. (Id. at 2.)

³ Comment was also requested from Kansas & Oklahoma Railroad, Inc. (K&O), which in 2001 acquired the majority of the lines owned or leased and operated by CKR, and K&O's parent, Watco Companies, Inc. (Watco). On August 6, 2020, K&O and Watco jointly commented that K&O did not acquire the Line's right-of-way or the right to reactivate service on it and that they have no information on who currently owns the right-of-way or whether CKR still exists. (K&O/Watco Comment 1-2.)

⁴ According to OTH and OmniTRAX, OTH is a noncarrier holding company that acquired control of OmniTRAX in 2015. (OTH/OmniTRAX Reply 1.) See also OmniTRAX Holdings Combined, Inc.—Acquis. of Control Exemption—Ala. & Tenn. River Ry., FD 36032 (STB served July 14, 2016) (granting OTH after-the-fact authority to acquire direct and exclusive control over 18 Class III railroads).

Because SRTC's request to vacate the NITU complies with the requirements of 49 C.F.R. § 1152.29(d)(2), the Board will grant the request. When the Board vacates a NITU under § 1152.29(d)(2), the carrier's abandonment exemption is reinstated. The line may then be fully abandoned if the carrier files a timely notice of consummation under 49 C.F.R. § 1152.29(e)(2). However, in light of the specific circumstances of this case, where the carrier authorized to abandon the Line no longer exists and all the entities that could hold the right to reactivate service indicate that they have no interest in doing so, the Board will waive the notice of consummation requirement of 49 C.F.R. § 1152.29(e)(2). Cf. ABE Fairmont, LLC—Aban. Exemption—in Fillmore Cnty., Neb., AB 1106X et al., slip op. at 5 (STB served Jan. 29, 2018) (waiving the notice of consummation requirement where the segment had been authorized for abandonment but the applicant carrier no longer existed, its former principal owner was deceased, and the real estate underlying the segment had been sold to several adjoining landowners). Therefore, the Board finds the Line is now abandoned and no longer part of the interstate rail network.⁵

It is ordered:

1. This proceeding is reopened.
2. The NITU served on June 10, 2013, is vacated.
3. The notice of consummation requirement under 49 C.F.R. 1152.29(e)(2) is waived in this case, and the Line is now abandoned and no longer part of the interstate rail network.
4. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.

⁵ The environmental consultation condition noted above relates to salvage activities and is not a barrier to consummation of the abandonment. See Consummation of Rail Line Abans. Subject to Historic Pres. & Other Env'tl. Conditions, EP 678, slip op. at 4 (STB served Apr. 23, 2008). However, this salvage condition will remain in place and applies to salvage activities whenever they occur, even if salvage is conducted later by a successor interest. See id. at 4-5.