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SERVICE DATE – JULY 20, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 471X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN LUCAS COUNTY,
OHIO

Decided: July 19, 2010

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 C.F.R. § 1152 Subpart F—Exempt Abandonments to abandon approximately 1.58 miles of railroad between milepost CO-12.73 and milepost CO-14.31 near Gould, in Lucas County, Ohio. Notice of the exemption was served and published in the Federal Register on August 11, 1993 (58 Fed. Reg. 42,746-47). The exemption became effective on September 10, 1993.

The Interstate Commerce Commission's Section of Energy and Environment (SEE) served an environmental assessment (EA) in this proceeding on August 23, 1993. In the EA, SEE noted that the Ohio State Historic Preservation Officer identified Bridge No. 13 as eligible for listing in the National Register of Historic Places and indicated that an archaeologically sensitive area exists in the Maumee River floodplain area. Accordingly, SEE recommended that a condition be imposed requiring CSXT to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the Section 106 process of the National Historic Preservation Act. By decision served on September 10, 1993, the recommended condition was imposed.

On June 23, 2010, Metroparks of the Toledo Area (Metroparks) late filed¹ a request for imposition of a public use condition and for issuance of a notice of interim trail use or abandonment (NITU) for the line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act) in order to negotiate with CSXT for acquisition of the right-of-way for use as a recreational trail. Metroparks 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

¹ The August 11, 1993 notice established August 23, 1993, as the deadline for filing trail use/rail banking requests. Thus, the time for filing trail use requests has long since passed. However, in Abandonment and Discontinuance of Rail Lines & 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 filings after the due date when good cause is shown. Because Metroparks' late-filed submission has not delayed the proceeding and will not prejudice any party, it will be accepted. See Wheeling & Lake Erie Ry.—Aban. Exemption—in Starke County, Ohio, AB 227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. By letter filed on June 24, 2010, CSXT has confirmed that it has not consummated abandonment of the line and has indicated its willingness to negotiate with Metroparks for interim trail use.

Trail use requests may be accepted as long as the Surface Transportation Board (Board) retains jurisdiction over the right-of-way and the carrier is willing to enter into negotiations. The Section 106 condition imposed in the September 10, 1993 decision is a barrier to consummation of the abandonment. Because it has not been removed, CSXT's abandonment authority has not expired, and the Board retains jurisdiction over the right-of-way. 49 C.F.R. § 1152.29(e)(2). Because CSXT is willing to negotiate for trail use with Metroparks, and Metroparks' request complies with the requirements of 49 C.F.R. § 1152.29, 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, CSXT may fully abandon the line, provided that CSXT has complied with the Section 106 condition imposed in the September 10, 1993 decision. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

Under 49 U.S.C. § 10905, the Board may only impose public use conditions for up to 180 days after the effective date of an abandonment, as its authority to impose such a condition expires after that period. See Rail Aban.—Public Use Conditions—Revision, 8 I.C.C.2d 392, 395-398 (1992). See 49 C.F.R. § 1152.28(b). As noted, this abandonment became effective on September 10, 1993. Thus, the Board's jurisdiction to impose a public use condition in this proceeding expired on March 9, 1994. Accordingly, the late-filed public use request will be denied.

This action 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. Metroparks' late-filed request for interim trail use/rail banking is accepted and granted.
3. Metroparks' late-filed request to impose a public use condition is denied.

4. Upon reconsideration, the notice served and published in the Federal Register on August 11, 1993, exempting the abandonment of the line described above, and conditioned by decision served on September 10, 1993, is modified to the extent necessary to implement interim trail use/rail banking as set forth below for a period of 180 days commencing from the service date of this decision and notice, until January 16, 2011.

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.

6. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations 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 January 16, 2011, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided that CSXT has complied with the Section 106 condition imposed in the September 10, 1993 decision.

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

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.