

SERVICE DATE – APRIL 19, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 745X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN FLOYD COUNTY, KY.

Decided: April 18, 2019

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 11.4 miles of railroad line between milepost COQ 0.0 near Prestonsburg and milepost COQ 10.1 near David, in Floyd County, Ky. (the Line). Notice of the exemption was served and published in the Federal Register on November 2, 2015 (80 Fed. Reg. 67,489). The exemption became effective on December 2, 2015.

On November 2, 2015, the City of Prestonsburg, Ky. (the City), filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to permit it to negotiate with CSXT for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d). Pursuant to 49 C.F.R. § 1152.29, the City also submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that the 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. In a response filed on November 2, 2015, as corrected on November 12, 2015, CSXT stated that it agreed to negotiate with the City for interim trail use.

Because the City's request complied with the requirements of 49 C.F.R. § 1152.29 and CSXT was willing to negotiate for trail use, a NITU was issued on December 1, 2015. The decision issuing the NITU also imposed two salvage-related conditions and an historic preservation condition under Section 106 of the National Historic Preservation Act. By a series of Board decisions, the latest of which was served on July 3, 2017, the NITU negotiating period was extended to, and ultimately expired on, November 20, 2017.

On March 6, 2019, the City late-filed a request for reissuance of a NITU for the Line in order to negotiate with CSXT for acquisition of the right-of-way for trail use.¹ The City again submitted a statement of willingness to assume financial responsibility. See 49 C.F.R. § 1152.29(a)(2). However, the City's request does not include an acknowledgment that "interim trail use is subject to the sponsor's continuing to meet its responsibilities described in

¹ See Aban. & Discontinuance of Rail Lines & Transp. Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997).

[§ 1152.29(a)(2)], and subject to possible future reconstruction and reactivation of the right-of-way for rail service” as required under § 1152.29(a)(3).

If the City wishes to supplement its March 6 NITU request to include this information, it is directed to do so no later than May 3, 2019.

It is ordered:

1. If the City wishes to supplement its March 6 NITU request, it is directed to do so no later than May 3, 2019.
2. This decision and notice is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.