

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1296X

R. J. CORMAN RAILROAD PROPERTY, LLC—ABANDONMENT EXEMPTION—
IN SCOTT, CAMPBELL, AND ANDERSON COUNTIES, TENN.

Decided: April 17, 2020

R. J. Corman Railroad Property, LLC (RJC Railroad Property), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service to abandon a railroad line extending from milepost 0.95 at or near Oneida, Tenn., to the end of the line at milepost 42.0 at or near Devonia, Tenn., a distance of approximately 41.05 miles in Scott, Campbell, and Anderson Counties, Tenn. (the Line).¹ On March 9, 2020, notice of the exemption was served and published in the Federal Register (85 Fed. Reg. 13,696). The exemption was scheduled to become effective on April 8, 2020. However, Arkansas-Oklahoma Railroad Co., a Class III rail carrier, filed a notice of intent to file an offer of financial assistance to purchase the Line, which stayed the effective date of the exemption until April 18, 2020.²

On April 7, 2020, Tennessee Citizens for Wilderness Planning, Inc., and Cumberland Trail Conference, Inc. (collectively, the Sponsors), late-filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to negotiate with RJC Railroad Property for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.³ Pursuant to 49 C.F.R. § 1152.29, the Sponsors 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 April 14, 2020, RJC Railroad Property notified the Board that it agrees to negotiate for interim trail use.

¹ The verified notice also embraced Docket No. AB 875 (Sub-No. 1X), R. J. Corman Railroad Company/Bardstown Line—Discontinuance Exemption—in Scott, Campbell, & Anderson Counties, Tenn., in which R. J. Corman Railroad Company/Bardstown Line sought an exemption to discontinue service over the Line.

² No offer of financial assistance was filed by the April 8, 2020 deadline. See 49 C.F.R. § 1152.27(c)(2)(ii)(B).

³ In Abandonment & Discontinuance of Rail Lines & 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 the Sponsors' late-filed request will prejudice any party, it will be accepted.

Because the Sponsors' request complies with the requirements of 49 C.F.R. § 1152.29 and RJC Railroad Property is willing to negotiate for interim trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the one-year period prescribed below.⁴ 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), (h). If no agreement is reached within one year, RJC Railroad Property 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.

In their April 7, 2020 filing, the Sponsors also requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. The Sponsors ask that RJC Railroad Property be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, for a 180-day period from the effective date of the abandonment authorization and request an order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts, and tunnels. The Sponsors state that the corridor has considerable value for recreational trail purposes and is in accordance with local plans. They further state that the 180-day period is needed to assemble and review title information, complete a trail plan, and begin negotiations with RJC Railroad Property.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the Sponsors have satisfied these requirements, a public use condition will be imposed requiring RJC Railroad Property to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and refrain from disposing of the corridor (other than tracks, ties, and signal equipment) for 180 days, commencing from April 18, 2020, the effective date of the exemption. If a trail use agreement is reached for a portion of the right-of-way prior to October 15, 2020, RJC Railroad Property must keep the

⁴ Effective February 2, 2020, the Board modified its rules regarding the number and duration of, and standard for granting, extensions of the NITU negotiating period (as well as the duration of the initial NITU negotiating period). See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019).

remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations.

A public use condition is not imposed for the benefit of any one potential purchaser but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, RJC Railroad Property is not required to deal exclusively with the Sponsors but may engage in negotiations with other interested persons.

This decision, and the proposed abandonment if implemented as conditioned, 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. The Sponsors' late-filed requests for a NITU under 16 U.S.C. § 1247(d) and a public use condition under 49 U.S.C. § 10905 are accepted and granted.
3. Upon reconsideration, the notice served and published in the Federal Register on March 9, 2020, 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 the parties to negotiate for trail use for the Line for a period of one year from the service date of this decision and notice, until April 17, 2021, and to permit public use negotiations as set forth below for the Line for a period of 180 days commencing from the effective date of the abandonment exemption, until October 15, 2020.
4. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, RJC Railroad Property shall keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date of the exemption, until October 15, 2020, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.
5. If an interim trail use/rail banking agreement is reached, it must require the Sponsors 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 they 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.

6. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the Sponsors' continuing to meet their responsibilities for the right-of-way described in paragraph 5 above.

7. 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), (h).

8. If interim trail use is implemented, and subsequently the Sponsors intend to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, they must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

9. If an agreement for interim trail use/rail banking is reached by April 17, 2021, for the right-of-way, interim trail use may be implemented. If no agreement is reached, RJC Railroad Property may fully abandon the Line, subject to any outstanding conditions.

10. This decision is effective on its service date.

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