

SERVICE DATE – DECEMBER 18, 2020

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1308X

YORKRAIL, LLC—ABANDONMENT EXEMPTION—IN YORK COUNTY, PA.

Decided: December 18, 2020

Yorkrail, LLC (Yorkrail) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon approximately 8.59 miles of rail line in Heidelberg Township (the Line).¹ Notice of the exemption was served and published in the Federal Register on November 20, 2020 (85 Fed. Reg. 74,485). The exemption is scheduled to become effective on December 20, 2020.

On November 13, 2020, the York County Rail Trail Authority (YCRTA) requested issuance of a notice of interim trail use or abandonment (NITU) to negotiate with Yorkrail to establish interim trail use and rail banking on the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. In a response filed on November 16, 2020, Yorkrail notified the Board that it is willing to negotiate an agreement for interim trail use with YCRTA and stated that it has agreed to sell the Line to YCRTA.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on November 27, 2020, recommending that two conditions be imposed on any decision granting abandonment authority. OEA noted that the National Geodetic Survey (NGS) has indicated that there are five geodetic survey markers present in the right-of-way that could be disturbed by the proposed abandonment. Accordingly, OEA recommended a condition requiring Yorkrail to notify NGS at least 90 days prior to beginning any abandonment-related salvage activities.

OEA also stated in the Draft EA that the Pennsylvania Game Commission (PGC) determined that abandonment-related salvage activities on a portion of the Line could have potential impacts on the nesting great blue heron, a species of special state concern. Therefore, PGC recommended that any abandonment-related salvage activities on that portion of the Line should be conducted outside great blue heron nesting season, which runs from February 15 through August 15. Accordingly, to address PGC's concerns, OEA recommended a condition

¹ In the same jointly filed notice, York Railway Company sought to discontinue service over the Line. See York Ry.—Discontinuance Exemption—in York Cnty., Pa., AB 1307X (STB served Nov. 20, 2020).

requiring Yorkrail to conduct any abandonment-related salvage activities on that portion of the Line between August 16 and February 14.

OEA issued its Final Environmental Assessment (Final EA) on December 17, 2020, noting that two additional comments were filed by a landowner whose property is adjacent to the Line. According to OEA, both comments express concerns about the federally threatened bog turtle and requests that a bog turtle environmental study be completed by an expert. OEA previously identified the bog turtle as a species that may be potentially present within the project area, but concluded in the Draft EA that because there are no designated critical habitats associated with that species within the project area and because of the limited scope of salvage activities, impacts to the bog turtle would be unlikely to occur. In the Final EA, OEA concludes that, in light of the limited scope of any abandonment-related salvage activities, that the proposed abandonment would have no impact on the bog turtle and recommends no mitigation with respect thereto. In the Final EA, OEA does, however, continue to recommend that the two conditions previously recommended in the Draft EA be imposed. Accordingly, based on OEA's recommendations, the conditions proposed in the Final EA will be imposed.

Interim Trail Use. YCRTA has submitted a statement of willingness as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service. As noted above, Yorkrail has notified the Board that it is willing to negotiate an agreement for interim trail use with YCRTA.

Because YCRTA's request complies with the requirements of 49 C.F.R. § 1152.29 and Yorkrail is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the one-year 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) & (h). If no agreement is reached within one year, Yorkrail may fully abandon the Line, subject to any outstanding conditions. See 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.

Public Use. As noted above, YCRTA also requested imposition of a public use condition under 49 U.S.C. § 10905 and 49 C.F.R. § 1152.28 prohibiting disposal of the corridor other than tracks, ties, and signal equipment, except for public use on reasonable terms and barring removal or destruction of potential trail-related structures. However, YCRTA requests the condition be effective for "0 days," because the parties already have executed an agreement for the sale of the Line. 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). Here, because YCRTA has requested an effective period of zero days—requesting, in other words, that the condition not take effect at all—YCRTA has not sufficiently set forth the public importance of the condition. YCRTA’s request for a public use condition will therefore be denied.

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. YCRTA’s request for a public use condition is denied.
3. Upon reconsideration, the notice served and published in the Federal Register on November 20, 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 YCRTA to negotiate with Yorkrail for trail use for the Line, for a period of one year from the service date of this decision and notice, until December 18, 2021. The abandonment is also subject to the following conditions:²
 - (a) Yorkrail shall notify NGS at NGS.Infocenter@noaa.gov at least 90 days prior to beginning abandonment-related salvage activities; and
 - (b) Yorkrail shall conduct any abandonment-related salvage activities on the portion of the Line extending approximately 1500 feet south from where it crosses Codorus Creek, between August 16 and February 14.
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.

² If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 were to be reached for the Line (or a portion thereof), compliance with these conditions would not be required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

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), (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 December 18, 2021, interim trail use may be implemented. If no agreement is reached, Yorkrail may fully abandon the Line, subject to any outstanding conditions.

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

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