

50726
DO

SERVICE DATE – APRIL 15, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 803X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN BOONE COUNTY,
W. VA.

Decided: April 14, 2021

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 9.9-mile rail line between milepost CLN 0.3 and milepost CLN 10.2, in Boone County, W. Va. (the Line). Notice of the exemption was served and published in the Federal Register on March 17, 2021 (86 Fed. Reg. 14,666). The exemption is scheduled to become effective on April 16, 2021.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on March 22, 2021, recommending that no environmental or historic preservation conditions be imposed.

Comments on the Draft EA were due by April 5, 2021, and no new comments were filed. On April 9, 2021, OEA issued a Final Environmental Assessment stating that it is not recommending that any conditions be imposed in this proceeding. Accordingly, a finding of no significant impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the Draft EA, OEA also stated that the right-of-way may be suitable for other public use following the abandonment and salvage of the Line. On April 1, 2021, the Boone County Commission (BCC) filed a request for issuance of a public use condition under 49 U.S.C. § 10905 and a notice of interim trail use or abandonment (NITU) under the National Trails System Act, 16 U.S.C. § 1247(d).

Public Use. 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, BCC asks that CSXT 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 exemption. BCC states that the right-

of-way would make an excellent recreational trail and provides important wildlife habitat and greenspace, and that conversion of the right-of-way to trail use is in accordance with local plans. BCC also asks that CSXT be prohibited from removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels, for 180 days, because these structures have considerable value for recreational trail purposes. BCC states that a 180-day period is needed to permit it to assemble and review title information, complete a trail plan, and negotiate with CSXT.

Because BCC has satisfied the requirements of § 1152.28(a)(2), a public use condition will be imposed, requiring CSXT 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 a 180-day period commencing from April 16, 2021, the effective date of the exemption, to October 13, 2021. 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, CSXT may engage in negotiations with other interested persons.

Interim trail use/rail banking. As noted, a NITU request has been filed by BCC but CSXT has not replied to that request. Under the Trails Act, the trails use program is voluntary and consensual between the railroad and the trail sponsor. See 49 C.F.R. § 1152.29; Citizens Against Rails to Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001); Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988); Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C. 2d 591, 598 (1986). Because CSXT has not consented to negotiate with BCC, BCC's request for issuance of a NITU will be denied.

It is ordered:

1. This proceeding is reopened.
2. Abandonment of the Line will have no significant effect on the quality of the human environment and conservation of energy resources or on historic resources.
3. BCC's request for issuance of a NITU is denied.
4. Upon reconsideration, the notice served and published in the Federal Register on March 17, 2021, exempting the abandonment of the Line described above is modified to the extent necessary 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 13, 2021.
5. Consistent with the public use condition imposed in this decision, CSXT shall keep intact the right-of-way (other than the tracks, ties, and signal equipment), including potential trail-related structures on the Line such as bridges, trestles, culverts, and tunnels, for a period of

180 days from the effective date of the exemption, until October 13, 2021, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use.

6. If consummation has not been effected by CSXT's filing of a notice of consummation by March 17, 2022, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

7. This decision is effective on its service date.

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