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SERVICE DATE - NOVEMBER 23, 2021

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 646 (Sub-No. 1X)

ATLANTIC AND WESTERN RAILWAY, LIMITED PARTNERSHIP
—ABANDONMENT EXEMPTION—
IN LEE COUNTY, N.C.

Decided: November 23, 2021

Atlantic and Western Railway, Limited Partnership (ATW) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a rail line between approximately milepost 2.71 and milepost 3.76 in Sanford, N.C. (the Line). Notice of the exemption was served and published in the Federal Register on October 25, 2021 (86 Fed. Reg. 58,995). The exemption is scheduled to become effective on November 24, 2021.

The North Carolina Department of Transportation (NCDOT) filed a request for issuance of a notice of interim trail use or abandonment (NITU) on November 4, 2021, to establish interim trail use/rail banking on the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). ATW filed a letter on November 5, 2021, agreeing to negotiate with NCDOT toward an interim trail use agreement for the Line.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on October 29, 2021, recommending that one condition be imposed on any decision granting abandonment authority.

In the Draft EA, OEA stated that the North Carolina Department of Environmental Quality (NCDEQ), Division of Environmental Assistance and Customer Service commented that eight contaminated sites had been identified within one mile of the proposed abandonment and provided a generic list of permits that may be required as a result of salvage activities. The Draft EA also noted that, in a separate letter dated July 16, 2021, the NCDEQ's Division of Waste Management, Inactive Hazardous Sites Branch, Superfund Section recommended that site files be reviewed to determine if any of the eight listed sites pose a potential risk of being disturbed as a result of ATW's salvage activities. Furthermore, the Draft EA stated that, by letter dated July 7, 2021, the NCDEQ Division of Waste Management, Solid Waste Section commented that any waste generated during the salvage process should be beneficially reused or recycled where applicable, or otherwise disposed of at a solid waste management facility permitted by the Division of Waste Management. Accordingly, OEA recommended a condition that would require ATW to consult with NCDEQ's Division of Waste Management to determine the need for any waste-related approvals or permits prior to conducting any salvage activities.

OEA issued its Final Environmental Assessment (Final EA) on November 19, 2021, indicating that no new comments were received. OEA continues to recommend that the condition previously recommended in the Draft EA be imposed. Accordingly, based on OEA's recommendation, the condition proposed in the Final EA will be imposed.

Interim Trail Use. NCDOT's request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and ATW states that it is willing to negotiate interim trail use with NCDOT. Because ATW agrees to NCDOT's request for a NITU and NCDOT's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued. The parties may negotiate an agreement for the right-of-way 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, ATW 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.

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 notice served and published in the Federal Register on October 25, 2021, 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 rail line, for a period of one year from the service date of this decision and notice, until November 23, 2022. The abandonment is also subject to the following condition:¹
 - (a) Prior to commencement of any abandonment-related salvage activities, ATW shall consult with the NCDEQ Division of Waste Management to ensure that any concerns regarding the need for permits, proper waste handling and disposal, and potential contamination of the right-of-way are addressed.
3. 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.

¹ If NCDOT implements trail use on the Line (or a portion thereof), compliance with the condition is not required with respect to any portion of the Line designated for trail use for the duration of such use.

4. 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 3 above.

5. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking 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).

6. If interim trail use/rail banking 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/rail banking agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by November 23, 2022, for the right-of-way, interim trail use/rail banking may be implemented. If no agreement is reached, ATW may fully abandon the Line, subject to any outstanding conditions.

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

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.