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ENTERED
Office of Proceedings
July 22, 2022
Part of
Public Record

July 22, 2022

BY E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Kiski Junction Railroad, Inc. – Abandonment Exemption – In Armstrong and
Westmoreland Counties, PA
Docket No. AB-1317X
Substitution of Interim Trail Sponsor (color images included)
Expedited Consideration Requested

Dear Ms. Brown:

By decision served September 30, 2021, the Board issued a notice of interim trail use (“NITU”) in favor of Armstrong Trails, Inc. (“Armstrong Trails”) as trail sponsor with respect to two segments of rail line: (1) Line Code 2229, from at or near milepost 30.0 in Alladin, Pa., to milepost 28.8, in Armstrong and Westmoreland Counties, Pa.; and (2) Line Code 2242, from milepost 0.0 at the connection of Line Code 2229, to milepost 4.0, in Armstrong County, Pa. (together, the “Rail Line”), a total distance of approximately 5.2 miles, that is subject of this abandonment proceeding.

Armstrong Trails hereby notifies the Board that it intends to terminate its trail use, and that Armstrong County, Pennsylvania (“Armstrong County”) intends to become the trail sponsor with respect to the entire Rail Line by assuming financial responsibility for the Rail Line.

In accordance with 49 C.F.R. §1152.29(f), Armstrong Trails and Armstrong County hereby jointly notify the Board as follows:

(1) Copies the initial NITU decision of September 30, 2021, are enclosed as Exhibit

FILED A.

July 22, 2022

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July 22, 2022

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- (2) A Statement of Willingness to Assume Financial Responsibility of Armstrong County is enclosed as Exhibit B.
- (3) Armstrong County acknowledges that interim trail use is subject to reconstruction and reactivation of the right-of-way of the Rail Line for rail service.
- (4) Armstrong Trails and Armstrong County intend that the transfer of responsibility for the right-of-way of the Rail Line be effective upon Board approval of this substitution request.

Based on the foregoing, Armstrong Trails and Armstrong County request that the Board reopen the abandonment exemption, vacate the existing NITU and issue an appropriate replacement NITU to Armstrong County as the new trail sponsor.

Armstrong County and Kiski Junction Railroad, Inc. ("KJRR"), as the owner of the Rail Line, are negotiating an interim trail use agreement and hope to close the transaction by mid-August 2022 in order to take advantage of funding opportunities. Accordingly, Armstrong Trails and Armstrong County request that the Board consider this request on an expedited basis.

Pursuant to 49 C.F.R. § 1002.2(e), Armstrong Trails herein requests a waiver or reduction of the filing fee, which has been prepaid for this filing (Pay.gov Confirmation No. 27104CRA). Armstrong Trails avers that it is in the public interest to grant the filing fee as Armstrong Trails is a locally managed non-profit corporation providing recreational opportunities to communities in and around Armstrong County, Pennsylvania. Armstrong Trails charges no fee for the use of its trails and solely operates on federal, state, and local funding, as well as the generous donations of its patrons, and the imposition of the filing fee, therefore, would present an undue hardship upon Armstrong Trails, as the applicant.

Please let us know if there are any questions regarding this filing.

By my signature below, I certify service by e-mail of a copy of this request on counsel for Armstrong County and KJRR.

Respectfully,

A handwritten signature in blue ink, appearing to read "John R. Markey".

John R. Markey, Esq.
Counsel for Armstrong Trails

cc: Andrew J. Sacco, Esq., Counsel for Armstrong County
Eric M. Hocky, Esq., Counsel for KJRR
Justin J. Marks, Esq., Counsel for KJRR

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SERVICE DATE – SEPTEMBER 30, 2021

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1317X

KISKI JUNCTION RAILROAD, INC.—ABANDONMENT EXEMPTION—
IN ARMSTRONG AND WESTMORELAND COUNTIES, PA.

Decided: September 30, 2021

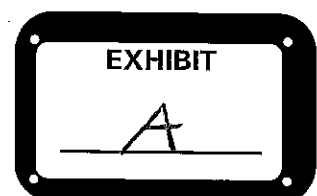
Kiski Junction Railroad, Inc. (KJRR), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon two segments of rail line: (1) Line Code 2229, from at or near milepost 30.0 in Alladin, Pa., to milepost 28.8, in Armstrong and Westmoreland Counties, Pa.; and (2) Line Code 2242, from milepost 0.0 at the connection of Line Code 2229, to milepost 4.0, in Armstrong County (together, the Line). Notice of the exemption was served and published in the Federal Register on September 2, 2021 (86 Fed. Reg. 49,409). The exemption is scheduled to become effective on October 2, 2021.

Armstrong Trails, Inc. (Armstrong Trails), filed a request for issuance of a notice of interim trail use or abandonment (NITU) on September 3, 2021, to establish interim trail use/rail banking on the Line under the National Trails System Act, 16 U.S.C. § 1247(d). KJRR filed a letter on September 7, 2021, agreeing to negotiate with Armstrong Trails 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 September 7, 2021, recommending that one condition be imposed on any decision granting abandonment authority. In the Draft EA, OEA stated that the National Geodetic Survey (NGS) indicated that one geodetic survey marker is present in the right-of-way but later indicated that the marker might already have been destroyed by past rail construction. Because there remains some uncertainty as to whether the marker remains, OEA recommended a condition requiring KJRR to notify NGS at least 90 days prior to beginning abandonment-related salvage activities to allow time for any geodetic survey markers to be preserved.

OEA issued its Final Environmental Assessment (Final EA) on September 27, 2021, indicating that no new comments were received and recommending again that the previously recommended condition be imposed. Accordingly, based on OEA's recommendation, the one condition proposed in the Final EA will be imposed.

Interim Trail Use. Armstrong Trails' request for a NITU complies with the requirements of 49 C.F.R. § 1152.29, and KJRR states that it is willing to negotiate interim trail use with Armstrong Trails. Because KJRR agrees to Armstrong Trails' request for a NITU and Armstrong Trails' 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, KJRR 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.

Petition for Extension of Time to File an Intent to File an Offer of Financial Assistance. On September 13, 2021, the Railroad Equipment Restoration Association (RERA) filed a petition requesting an extension of time to submit a formal expression of intent to file an Offer of Financial Assistance (OFA), or, in the alternative, requesting that its filing be considered as its formal expression of intent. On September 15, 2021, KJRR filed a reply objecting to RERA's requests.

The petition for an extension will be denied, as "allowing late filing of an OFA over the owning rail carrier's objection would be contrary to Congress's direction to streamline the abandonment and OFA process." Gen. Ry.—Aban. Exemption—in Osceola & Dickinson Cntys., Iowa, AB 1067 (Sub-No. 2X), slip op. at 2 (STB served Oct. 24, 2008) (citing Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. § 10903, 1 S.T.B. 894, 909-10 (1996); R.R. Ventures, Inc. v. STB, 299 F.3d 523, 531 (2002)). Furthermore, RERA's September 13, 2021 filing cannot be considered a formal expression of intent to file an OFA, as RERA has not attempted to satisfy the criteria at 49 C.F.R. § 1152.27(c)(1)(ii) to show that it is preliminarily financially responsible, as required by 49 C.F.R. § 1152.27(c)(2)(i).¹

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 September 2, 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 September 30, 2022.
3. RERA's petition for extension of time to file an expression of intent to file an OFA and its alternative request to consider its pleading as an official expression of intent to file an OFA are denied.

¹ Because RERA's filing does not constitute a formal expression of intent to file an OFA, the automatic 10-day tolling of the exemption's effective date under 49 C.F.R. § 1152.27(c)(2)(i) does not occur here.

4. KJRR shall notify NGS at NGS.Infocenter@noaa.gov at least 90 days prior to beginning abandonment-related salvage activities.²

5. 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.

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 trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 5 above.

7. 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).

8. 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.

9. If an agreement for interim trail use/rail banking is reached by September 30, 2022, for the right-of-way, interim trail use/rail banking may be implemented. If no agreement is reached, KJRR may fully abandon the Line, subject to any outstanding conditions.

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

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

² If Armstrong Trails implements trail use on the Line (or a portion thereof), compliance with this condition is not required with respect to any portion of the Line designated for trail use for the duration of such use.

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under Section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 CFR 1152.29 with respect to the Rail Line (as defined below) owned by Kiski Junction Railroad, Inc. ("KJRR"), Armstrong County, Pennsylvania ("Armstrong County") is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against the Rail Line.

The property, two segments of rail line: (1) Line Code 2229, from at or near milepost 30.0 in Alladin, Pa., to milepost 28.8, in Armstrong and Westmoreland Counties, Pa.; and (2) Line Code 2242, from milepost 0.0 at the connection of Line Code 2229, to milepost 4.0, in Armstrong County, Pa. (together, the "Rail Line") a total distance of approximately 5.2 miles. The property is all of the line of railroad proposed for abandonment in STB Docket No. AB-1317X.

A map depicting the Rail Line is attached.

Armstrong County acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

A copy of this statement is being served on KJRR on the same date that it is being served on the Board.

Armstrong County

By: PAT FABIAN

Name: PAT FABIAN

Title: ARMSTRONG COUNTY COMMISSIONER

Dated: July 22, 2022

EXHIBIT

B