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SERVICE DATE – NOVEMBER 3, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1317X

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

Decided: November 3, 2022

On August 13, 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 became effective on October 2, 2021.

By decision and notice of interim trail use or abandonment (NITU) served on September 30, 2021, this proceeding was reopened, and a one-year period was authorized for Armstrong Trails, Inc. (Armstrong Trails), to negotiate an interim trail use/rail banking agreement with KJRR for the Line, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d). On July 22, 2022, Armstrong Trails and Armstrong County, Pa. (Armstrong County), jointly filed a letter indicating that Armstrong Trails intended to terminate its trail use negotiations and Armstrong County intended to negotiate to become the trail sponsor for the Line. KJRR consented to the substitution. In a decision served August 15, 2022, in this docket, the Board reopened the abandonment exemption to vacate the existing NITU and issued a replacement NITU to allow Armstrong County to negotiate to be the trail sponsor for the Line.

Separately on July 22, 2022, Armstrong County submitted a petition seeking issuance of a NITU with respect to approximately 10 miles of track, extending from milepost 39 in the vicinity of Crooked Creek, Pa. in the north, and running southwest along the Allegheny River for approximately 10 miles to milepost 30 near Schenley, Pa. at the termination of the Line (the Adjacent Track). Armstrong County refers to the Adjacent Track as “spur” track. In a letter filed on August 1, 2022, KJRR replied, stating that the Adjacent Track is ancillary track excepted from Board licensing under 49 U.S.C. § 10906 and that, although it connects with the Line, it was not included in the initial trail use request in this proceeding. KJRR also states that it “has not fully abandoned the Spur Track” and that it is willing to negotiate an agreement for interim trail use with Armstrong County for the Adjacent Track.

Armstrong County's request for a NITU on the Adjacent Track will be denied without prejudice. The record here does not sufficiently support the request. First, the Adjacent Track was not specifically a part of the abandonment exemption for the Line, and it is therefore unclear whether the request for a NITU on the Adjacent Track is appropriate in this docket. Second, there is nothing on the record that establishes that the Adjacent Track is in fact excepted track under 49 U.S.C. § 10906, or that it is ancillary to the Line. The Board and courts look at many factors in determining whether a particular track is mainline or excepted track, including, among others, the intended use and physical characteristics of the track. See Tri-City R.R.—Petition for Declaratory Order, FD 36037 slip op. at 4 (STB served June 1, 2017). The length of the Adjacent Track, while not dispositive, raises questions about whether it would be considered ancillary under 49 U.S.C. § 10906. Lastly, Armstrong County has not cited any precedent that clearly establishes that the Board may issue a NITU on track that is not mainline under 49 U.S.C. §§ 10901 and 10903. Therefore, Armstrong County's request will be denied.

It is ordered:

1. Armstrong County's request for a NITU on the Adjacent Track is denied without prejudice.
2. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.