

308175

April 11, 2024

ENTERED  
Office of Proceedings  
April 11, 2024  
Part of  
Public Record

**VIA E-FILING**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

Re: *The Maryland and Delaware Railroad Company – Modified Certificate of Public Convenience and Necessity – Request of the Dorchester County, MD for Interim Trail Use*, STB Docket No. FD 29830

Dear Ms. Brown:

We write on behalf of the Maryland Transit Administration (“MTA”) in response to two nearly identical letters, one by George and Dee Windsor filed on April 4, 2024, and another by Mark Hill of HEMS Properties LLC, received by MTA on April 8, 2024, regarding the above-captioned proceeding. MTA submits this response to correct misstatements in these letters and clarify the status and future of the right-of-way (the “Line”) that is the subject of the Notice of Partial Termination of Modified Certificate (“MDDE Notice”) filed by the Maryland and Delaware Railroad (“MDDE”) on March 1, 2024.

MTA is the owner of the Line. The Line was historically part of longer connected lines known as the Cambridge Secondary Track (U.S.R.A. Line No. 168) and the Preston Industrial Track (U.S.R.A. Line Nos. 152 and 153). MTA acquired these lines, along with several other lines on Maryland’s Eastern Shore, in 1982 to preserve them after they were not transferred to Conrail and were made available for subsidy following the Penn Central bankruptcy and development of the congressionally mandated Final System Plan. *See U.S. Ry. Ass’n, Final System Plan*, Vol. 2 (1975) at 55-56 (Cambridge Secondary Track), 129-31 (Preston Industrial Track). Since 1982, the Line has been subject to a modified certificate held by MDDE. *Maryland and Delaware R.R.—Modified Rail Certificate*, FD 29830 (ICC served Feb. 9, 1982).

On March 1, 2024, in response to the MDDE Notice, Dorchester County, MD (the “County”) filed a request for the Board to issue a Notice of Interim Trail Use. The County also filed a Statement of Willingness to Assume Financial Responsibility, as required under the Board’s regulations. 49 C.F.R. § 1152.29(a)(3). On March 1, 2024, MTA filed a letter consenting to trail

use. MTA's consent to trail use reflects MTA's continued intent to ensure the Line remains preserved for future common carrier rail use.

In their communication, the Windsors assert that the MDDE Notice "would then make the railroad abandoned and allow[] all rights of ways, easements, etc. to return to the land owner." Furthermore, they "now request[] that all rights of way, easements, and any access to the railroad . . . will also be terminated and cannot be transferred or designated to another company, business, government or other entity." Mr. Hill makes nearly identical statements in his letter. These statements misinterpret the scope of the Board's jurisdiction and mischaracterize the effect of the proceedings.

First, the Windsors and Mr. Hill misunderstand the scope of the Board's jurisdiction, which does not extend to determining any property interests in the Line. The well-established law is clear that the Board does not have jurisdiction to allocate property rights or ownership of railroad lines, which are governed by state law. *Preseault v. I.C.C.*, 494 U.S. 1, 8 (1990); *see also Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking*, EP 749 et al., slip op. at 2-4 (STB served Oct. 2, 2018) (explaining that reversionary property interests are governed by state law and only become relevant upon consummation of abandonment). Therefore, the Windsors' and Mr. Hill's assertions about any change in property rights over the Line is inaccurate, as this would need to be determined under state law, and their request to the Board is inappropriate because the Board has no power to make property rights determinations.

Second, the Windsors' and Mr. Hill's suggestion that the Line will be removed from the Board's jurisdiction, thereby "allowing all rights of way, easements, etc. to return to the land owner" mischaracterizes the effect of the proceedings because MTA, the owner of the Line, has no intent to remove the Line from the Board's jurisdiction. MDDE has sought to terminate its modified certificate for the Line, which constitutes a portion of the lines covered under its modified certificate. *See Maryland and Delaware R.R.*, FD 29830, slip op. at 1.<sup>1</sup> However, a modified certificate operator's intent is not the same as the line owner's intent. *See Beaufort R.R. Co.—Modified Rail Certificate*, FD 34943, slip op. at 6 (STB served March 19, 2008). It "would be at odds with that goal and that philosophy for [the Board] to conclude that, once a modified certificate operator's arrangement with a state for providing rail service ends, the state could automatically lose its property and its public investment of funds in the property." *Id.*, slip op. at 8. Board precedent makes clear that in the context of a modified certificate temporary periods of discontinuance do not equate to a state's intent to abandon a rail line that it acquired to preserve. *Id.*

The owner of the Line, MTA, has no intent to abandon the Line. To the contrary, MTA's actions in response to MDDE's filing reflect MTA's intent to preserve the Board's jurisdiction over the Line for future potential reactivation of rail service. As permitted under the Board's regulations, 49 C.F.R. § 1152.29, MTA has properly and timely filed a letter with the Board as owner of the Line consenting to a request made by the County for interim trail use under the

---

<sup>1</sup> These proceedings do not impact the remaining segments and lines that remain subject to MDDE's 1982 Modified Certificate.

Cynthia T. Brown

April 11, 2024

Page 3

National Trails System Act, 16 U.S.C. § 1247(d) (“Trails Act”). Like the modified certificate process, the Board’s interim trail use process under to the Trails Act seeks to preserve the Board’s jurisdiction over rail lines and rail corridors that would otherwise be allowed to be abandoned. *Beaufort*, FD 34943, slip op. at 5. Rail lines subject to a modified certificate are eligible for railbanking under the Trails Act, and in fact another segment of a different line previously subject to the same modified certificate as the Line has already been railbanked. *Maryland and Delaware R.R.—Certificate of Interim Trail Use and Partial Termination of Modified Rail Certificate*, FD 29830, slip op. at 2 (STB served Nov. 5, 2010). As the Board’s predecessor recognized, “Section 1247(d) preempts State laws that would otherwise result in extinguishment of easements for railroad purposes and reversion of rights-of-way to abutting landowners.” *Rail Abandonments – Use of Rights-of-Way as Trails* (49 C.F.R. Parts 1105 and 1152), 2 I.C.C.2d 591, 596 (1986).

MTA recognizes that once a railroad (or in this case, the owner of the line) agrees to negotiate an interim trail use agreement “the Board *will* issue a Notice of Interim Trail Use,” 49 C.F.R. § 1152.29(d)(1) (emphasis added), and that the Board’s role in issuing a Notice of Interim Trail Use, where the parties voluntarily agree to railbanking, is ministerial and not discretionary. *See Union Pacific R.R.—Abandonment—In Morgan County, CO (Julesburg Subdivision)*, AB-33 (Sub-No. 86), slip op. at 4 (STB served Jan. 30, 1997). Accordingly, MTA anticipates that the Board will issue a Notice of Interim Trail Use allowing MTA and the County to proceed with entering into a trail use agreement, permitting the Line to remain subject to the Board’s jurisdiction as a railbanked railroad line, which would thereby preempt any reversionary rights abutting property owners may have.

Please advise if the Board requires any information or filings by our client in addition to this letter to respond to the Windsors’ and Mr. Hill’s letters to the Board.

Sincerely,



Christian L. Alexander

Counsel for Maryland Transit Administration

CC:

Parties of Record

Julie Sweeney, Principal Counsel, Maryland Transit Administration, Assistant Attorney General for the State of Maryland