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SERVICE DATE – AUGUST 30, 2024

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. FD 29830

MARYLAND AND DELAWARE RAILROAD COMPANY—
MODIFIED RAIL CERTIFICATE

Decided: August 29, 2024

On March 1, 2024, the Maryland and Delaware Railroad Company (MDDE) filed a notice of intent to terminate service under a modified certificate of public convenience and necessity (Modified Certificate) pursuant to 49 C.F.R. § 1150.24 over three segments of the rail line between Seaford, Del., and Cambridge, Md., known as the Cambridge Secondary Track. MDDE states that the Cambridge Secondary Track is one of the lines, among others, addressed in MDDE's Modified Certificate issued in Maryland & Delaware Railroad Co.—Modified Rail Certificate, FD 29830 (ICC served Feb. 9, 1982).

The three segments over which MDDE intends to terminate service are as follows: (1) an approximately 8.23-mile segment of line located in Dorchester County, Md., from approximated valuation station 1714+31 +/-, as shown on valuation map V3-68,¹ at approximate milepost 32.47 at Cedar Street in Cambridge, Md., to approximate valuation station 1280+00 +/- as shown on valuation map V3-60, at approximate milepost 24.24 at US 50 – Ocean Gateway near Linkwood, Md.; (2) an approximately 6.1-mile segment of line located in Dorchester County and Caroline County, Md., from approximated valuation station 1637+80 +/- as shown on valuation map V20-32, at approximate milepost 31.2 at Broad Street in Hurlock, Md., to approximate valuation station 1315+90 +/-, as shown on valuation map V20-26, at approximate milepost 25.1 near Railroad Avenue in Preston, Md.; and (3) an approximately 0.4-mile segment of line located in Dorchester County from approximated valuation station 1642+28 +/- as shown on valuation map V20-32, at approximate milepost 31.28 in Hurlock, to approximate valuation station 1663+10 +/-, as shown on valuation map V20-26, at approximate milepost 31.68 at Delaware Avenue in Hurlock (collectively, the Segments).²

¹ The valuation maps are attached to MDDE's notice as Exhibit B.

² Under 49 C.F.R. § 1150.24, an operator must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate. MDDE states that it will terminate service 60 days following the date of its notice. Additionally, MDDE states that no service has been operated over the Segments for a number of years, and the Segments, along with other connecting portions of the Cambridge Secondary Track, have been embargoed for several years due to deteriorated track conditions. Accordingly, MDDE states that it has not provided notice to any shippers. See 49 C.F.R. § 1150.24(b) (requiring notice of intent to

MDDE explains that following the issuance of the Modified Certificate to operate the Segments, it conducted freight operations on the Segments pursuant to an agreement dated June 25, 2008, as amended, with the Maryland Transit Administration (MTA), the owner of the real property interest underlying of the Segments.³ (MDDE Pet. 2.)

Also on March 1, 2024, Dorchester County, a Maryland charter county (the County), filed a request for the imposition of interim trail use for the Segments under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). Included in the filing, the County submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way as required at 49 C.F.R. § 1152.29 and acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. (County Req. 3.) MDDE states that it is willing to negotiate an agreement for interim trail use with the County. (MDDE Pet. 2.) On the same day, MTA filed a letter confirming its consent to the partial termination of the Modified Certificate and the County's request for interim trail use. (MTA Consent Letter.)

Two comments were submitted regarding MDDE's filing: on April 4, 2024, by George Windsor and Dee Windsor (Windsor Comment); and on April 11, 2024, by Mark Hill, the Resident Agent of HEMS Properties LLC (HEMS Comment) (collectively, Commenters). In both letters, Commenters assert ownership of land that is located in or adjoined with the Segments, specifically the segment known as the Cambridge Secondary. (Windsor Comment 1; HEMS Comment 1.) Commenters assert that MDDE's request for a partial termination amounts to abandonment of the Segments. (*Id.*)

On April 11, 2024, MTA, as the owner of the Segments, submitted a letter in response to the Commenters' letters. MTA asserts it does not have any intent to abandon the Segments. (MTA Reply Letter 1-2.) MTA also argues that it showed intent to preserve the Board's jurisdiction over the Segments by consenting to the County's request for interim trail use under the Trails Act. (*Id.* at 2-3; *see* MTA Consent Letter.)

The Board has jurisdiction to impose interim trail use in a proceeding where a notice is filed under 49 C.F.R. § 1150.24 to terminate operations under a modified certificate. *See, e.g., Port of Tillamook Bay—Modified Rail Certificate*, FD 31676 (STB served July 26, 2016). Furthermore, the record reflects MTA's intent not to abandon the Segments.⁴

terminate service to be mailed to all persons that have used the line within the six months preceding the notice).

³ MTA acquired the Segments under Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions (Common Carrier Status of States), 363 I.C.C. 132 (1980), *aff'd sub nom. Simmons v. ICC*, 697 F.2d 326 (D.C. Cir. 1982).

⁴ In cases involving lines acquired by state entities under Common Carrier Status of States, the Board looks to see whether there is concrete evidence of the line owner's intent regarding abandonment of the line. *See Beaufort R.R.—Modified Rail Certificate*, FD 34943, slip op. at 6 (STB served March 19, 2008). MTA's consent to the interim trail use request supports the conclusion that MTA does not intend to remove the Segments from the national rail

Because the County's request complies with the requirements of 49 C.F.R. § 1152.29 and MTA is willing to negotiate for interim trail use with the County, a certificate of interim trail use or abandonment (CITU) will be issued for the Segments.⁵ The County is free to negotiate Trails Act agreements during the one-year period prescribed below. If any interim trail use agreements are reached (and thus, interim trail use is established) the parties to each agreement shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within one year over any of the subject rights-of-way, MTA will be permitted to fully abandon those portions of the Segments. 49 C.F.R. § 152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 C.F.R. § 1152.29(c)(2).

It is ordered:

1. The request for a CITU under 16 U.S.C. § 1247(d) is accepted. The County may negotiate with MTA for interim trail use for the Segments for a period of one year from the service date of this decision, until August 30, 2025.
2. 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.
3. 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 2 above.
4. 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. See 49 C.F.R. § 1152.29(d)(2), (h).
5. If interim trail use 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

system, as the purpose of the Trails Act is to preserve rail corridors for possible reactivation of rail service. See Pol'y Statement on Rails to Trails Conversions, EP 274 (Sub-No. 13B) (ICC served Feb. 5, 1990).

⁵ The County requested issuance of a Notice of Interim Trail Use; however, requests for interim trail use conditions on other segments of line that were subject to the same modified certificate have been granted as CITUs in the past. See, e.g., Md. & Del. R.R.—Termination of Modified Rail Certificate, FD 29830 (STB served Jan. 9, 2006); Md. & Del. R.R.—Certificate of Interim Trail Use & Partial Termination of Modified Rail Certificate, FD 29830 (STB served Nov. 5, 2010).

agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking has been reached by August 30, 2025, interim trail use may be implemented. If no agreement is reached by that time, the Segments may be fully abandoned.

7. This decision is effective on its service date.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.