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SERVICE DATE – SEPTEMBER 2, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 681X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN ORANGE
COUNTY, FL

Decided: August 29, 2008

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 0.69-mile line of railroad on its Southern Region, Jacksonville Division, Sanford Subdivision, extending between railroad milepost ST 815.88 and railroad milepost ST 816.57, known as the “Mills & Nebraska Lead,” in Orlando, Orange County, FL. Notice of the exemption was served and published in the Federal Register (72 FR 41387-88) on July 27, 2007. The exemption became effective on August 28, 2007.

By decision and notice of interim trail use (NITU), served on August 27, 2007 (August 2007 decision), the proceeding was reopened and a 180-day period was authorized for the City of Orlando (City) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way in this proceeding.¹ The negotiating period under the NITU was extended until August 22, 2008, by decision served on March 25, 2008 (March 2008 decision). The March 2008 decision also granted a request by CSXT to extend the time to consummate the abandonment until October 21, 2008.

On August 22, 2008, the City filed a request to extend the NITU negotiating period for an additional 180 days. The City states that it has been unable to finalize negotiations with CSXT and that more time is needed to conclude negotiations. In an August 26, 2008 reply to the City’s request, CSXT states that it concurs with the extension request. Additionally, CSXT requests an extension of time, from October 21, 2008, to April 19, 2009, to consummate the abandonment.²

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may

¹ The August 2007 decision also imposed a 180-day public use condition, which expired on February 24, 2008, and by statute may not be extended.

² Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

be extended.³ Under the circumstances, extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Also, an extension of time to consummate the abandonment and to file a notice of consummation in this proceeding is justified. Accordingly, the NITU negotiating period will be extended for an additional 180 days, from August 22, 2008, to February 18, 2009, and the consummation notice filing deadline will be extended until April 19, 2009.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The City's request to extend the NITU negotiating period and CSXT's request to extend the time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended for an additional 180 days, until February 18, 2009.
3. The authority to abandon must be exercised on or before April 19, 2009.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary

³ See Rail Abandonments–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).