

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 684X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN SHELBY
COUNTY, TN

Decided: August 21, 2008

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 13.34-mile rail line on CSXT's Southern Region, Nashville Division, Memphis Terminal Subdivision, between milepost ONI 210.66 near Cordova and milepost ONI 224 in Memphis, known as the Cordova Branch, in Shelby County, TN (Line). Notice of the exemption was served and published in the Federal Register on September 27, 2007 (72 FR 54977-78).

By decision and notice of interim trail use or abandonment (NITU) served on October 26, 2007 (October 2007 decision),¹ the proceeding was reopened and a 180-day period was authorized for the Memphis Community Connector (MCC) to negotiate an interim trail use/rail banking agreement with CSXT for the Line pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). By decision served on April 30, 2008 (April 30 decision), the NITU was modified to include Shelby County, TN (the County), as an additional party to MCC's trail use negotiations. The April 30 decision also extended the trail use negotiating period under the NITU until June 22, 2008, and extended the deadline for CSXT to file a notice of consummation until August 21, 2008.

In a letter filed on August 21, 2008, MCC, the County, and CSXT (the parties) request an extension of the negotiating period, until November 19, 2008, for the segment of the line from MP ONI 224 (VS 11812+37) to MP ONI 216.92 (VS 11439+97) (Memphis Segment). The parties state that they have executed a letter agreement indicating their willingness to enter into a trail use agreement for the Memphis Segment and need additional time to prepare a final trail use agreement.

In a second letter filed on August 21, 2008, the parties request an extension of the negotiating period, until June 22, 2009, for the segment of the line from MP ONI 210.66 to

¹ The October 2007 decision also imposed one environmental and one historical condition. The environmental condition required CSXT to consult with the National Geodetic Survey (NGS) and notify NGS 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station marker. That condition remains in effect. The historic preservation condition was removed in a decision served on December 20, 2007, in this proceeding.

MP ONI 216.92 (Cordova Segment). The parties state that, although they have executed a letter agreement indicating their willingness to continue negotiating for a trail use agreement for the Cordova Segment, they expect that it will take up to a year to finalize negotiations and arrange for funding.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and agrees to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² 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). Accordingly, the NITU negotiating period will be extended until November 19, 2008, for the Memphis Segment, and until June 22, 2009, for the Cordova Segment.³

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

It is ordered:

1. The request of the parties to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU for the Memphis Segment is extended to November 19, 2008.
3. The negotiating period under the NITU for the Cordova Segment is extended to June 22, 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

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

³ An extension to June 22, 2009, provides a period that is longer than 180 days but is appropriate under these circumstances. The 180-day period is not statutory. It was adopted in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 605 (1986), to promote the expeditious conclusion of negotiations.