

39688
DO

SERVICE DATE – FEBRUARY 13, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-976 (Sub-No. 2X)

PITTSBURG & SHAWMUT RAILROAD, LLC—ABANDONMENT EXEMPTION—
IN CLARION AND JEFFERSON COUNTIES, PA

Decided: February 12, 2009

Pittsburg & Shawmut Railroad, LLC (Pittsburg & Shawmut), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 35.95 miles of rail line, extending between milepost 6.0 in or near Lawsonham, Clarion County, PA, and milepost 41.95 in Brookville, Jefferson County, PA (Line). On June 28, 2007, notice of the exemption was served and published in the Federal Register (72 FR 35545-46) (June 2007 notice).¹ The exemption became effective on July 28, 2007. By decision and notice of interim trail use or abandonment (NITU) served on July 27, 2007, the proceeding was reopened and a 180-day period was authorized for Allegheny Valley Land Trust (Allegheny Valley) to negotiate an interim trail use/rail banking agreement with Pittsburg & Shawmut for the right-of-way involved in this proceeding, pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The trail use negotiating period under the NITU was extended by decisions served on February 8, 2008, and August 1, 2008. The latest extension expired on January 18, 2009.²

By letter dated January 14, 2009, Allegheny Valley requests an additional 180-day extension of the NITU negotiating period. By letter dated January 15, 2009, Pittsburg & Shawmut states that it agrees to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.³ Under the circumstances, further 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

¹ The June 2007 notice embraced STB Docket No. AB-369 (Sub-No. 6X), Buffalo & Pittsburgh Railroad, Inc.—Discontinuance Exemption—in Clarion and Jefferson Counties, PA.

² In addition to interim trail use, the July 27, 2007 decision also imposed a public use condition that expired on January 24, 2008, and may not be extended, and two consultation conditions regarding the salvage of the Line.

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

(8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for an additional 180 days from January 18, 2009, to July 17, 2009.

The June 2007 notice established June 28, 2008, as the date by which Pittsburg & Shawmut would have to consummate its abandonment of the Line. Under 49 CFR 1152.29(e)(2), however, if a legal or regulatory barrier to consummation exists at the end of the 1-year time period (as was the case here where the trail use negotiating period under the NITU constituted a regulatory barrier), the rail carrier has until 60 days after the expiration, satisfaction, or removal of the barrier (here, expiration of the trail use negotiating period) to consummate the abandonment and file its notice of consummation. Accordingly, the authority to abandon has not expired and the parties may continue their trail use negotiations.

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

It is ordered:

1. Allegheny Valley's request to extend the NITU negotiating period for an additional 180 days is granted.
2. The negotiating period under the NITU is extended to July 17, 2009.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary