

SERVICE DATE – APRIL 6, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 613X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN JEFFERSON COUNTY, AL

Decided: April 3, 2009

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 16.47-mile rail line extending from milepost ONC 384.00 at Black Creek to milepost ONJ 400.47 at West Jefferson, in Jefferson County, AL. Notice of the exemption was served and published in the Federal Register on September 22, 2003 (68 FR 55085).

By decision and notice of interim trail use or abandonment (NITU) served October 21, 2003, the proceeding was reopened and a 180-day period was authorized for the Jefferson County Commission (County) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ The trail use negotiation period under the NITU was extended several times, with the decision served April 5, 2007, extending the negotiation period until October 3, 2007.

By decision served on October 2, 2007, the Board vacated the NITU served on October 21, 2003, and issued a replacement NITU substituting the City of Fultondale, AL (the City), as the interim trail use proponent in lieu of the County with respect to the 16.47-mile line. The Board also authorized a new, 180-day negotiation period for the City and CSXT, extending from October 2, 2007, until March 30, 2008.

By decisions served on April 3, 2008, and October 2, 2008, the new trail use negotiation period under the NITU was extended to March 25, 2009. The 2008 decisions also extended the consummation notice filing deadline until May 24, 2009. In this decision, the Board is granting the requests by the City to extend the NITU negotiating period and by CSXT to extend the time for it to exercise the abandonment authority.

¹ The October 21, 2003 decision also imposed an environmental condition that required CSXT to provide the National Geodetic Survey with 90 days' notice prior to any salvage activities in order to plan the relocation of three geodetic station markers that may be affected by the abandonment. The condition remains in effect.

By letter dated March 19, 2009, the City has submitted a request for an additional 180-day extension of the negotiating period. The City states that CSXT has provided it with a Purchase Sale Agreement and that the City has responded on March 17, 2009, with its counter offer. The City also states that, while the parties continue to work diligently to reach an agreement, they do not anticipate being able to complete their negotiations by the March 25, 2009 deadline and that they want to continue trail use negotiations.

By letter dated March 26 2009, CSXT has concurred in the request to extend the negotiating period. Additionally, CSXT has requested an extension of the consummation notice filing deadline until November 20, 2009.

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.² 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 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended from March 25, 2009, to September 21, 2009, and the consummation notice filing deadline will be extended from May 24, 2009, until November 20, 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 requests by the City for an additional 180-day NITU negotiating period and by CSXT to extend the time to exercise its abandonment authority are granted.
2. The negotiating period under the NITU is extended to September 21, 2009.
3. The authority to abandon must be exercised on or before November 20, 2009.

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

4. This decision is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary