

31214
DO

SERVICE DATE - AUGUST 4, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1161X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--
IN VERMILION AND CHAMPAIGN COUNTIES, IL

Decided: August 1, 2000

On February 7, 1997, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for Champaign County Design and Conservation Foundation (CCDC Foundation) to negotiate an interim trail use/rail banking agreement with Consolidated Rail Corporation (Conrail)¹ for approximately 24.50 miles of its line of railroad known as the Pekin Secondary Track from approximately milepost 4.00 to approximately milepost 28.50, in Vermilion and Champaign Counties, IL. At the request of the CCDC Foundation, the negotiation period under the NITU was extended several times; the latest extension was scheduled to expire on July 23, 2000.²

On July 27, 2000, CCDC Foundation filed a request to extend the negotiation period for an additional 180 days. CCDC Foundation states that it is prepared to sign a written agreement of sale, and has completed all of the studies required under the proposed agreement, but that additional time is needed to obtain CSX's corporate approval of agreement of sale documents and for the preparation of closing documents. CCDC Foundation states that it has discussed this

¹ By decision served July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail, and the division of the assets thereof, by CSX Corporation and CSX Transportation, Inc. (referred to collectively as CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998. The division of the assets of Conrail was effected by CSX and NS on June 1, 1999. See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 127 (STB served May 20, 1999).

² The negotiation period under the NITU was extended by decisions served February 7, 1997, August 1, 1997, February 3, 1998, August 14, 1998, January 29, 1999, August 3, 1999, and January 24, 2000.

extension request with CSX, Conrail's successor-in-interest in this proceeding, and that CSX agrees.

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 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to January 19, 2001.

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

It is ordered:

1. The negotiating period under the NITU is extended to January 19, 2001.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

³ See Rail Abandonments–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company–Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company–Abandonment in Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).