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SERVICE DATE- NOVEMBER 16, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 670X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN MIDDLESEX
COUNTY, MASS.

Decided: November 15, 2011

This decision extends the interim trail use negotiating period for the line of railroad authorized for abandonment in this proceeding.

By decision and notice of interim trail use or abandonment (NITU) served on October 25, 2006, the Board granted the petition for exemption filed by CSX Transportation, Inc. (CSXT) for abandonment of a 2.39-mile line known as the Saxonville Industrial Track, extending between milepost QBX 0.15 and the end of the line at milepost QBX 2.54, in Middlesex County, Mass. The exemption was subject to public use, environmental, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the Town of Natick, Mass. (Town), to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. In a series of decisions issued from May 23, 2007, to May 31, 2011, the negotiation period was extended until October 29, 2011, thereby also extending the deadline for CSXT to file its notice of consummation and exercise its abandonment authority until December 28, 2011.

On October 28, 2011, the Town filed a request to extend the NITU negotiating period for an additional 180 days. The Town indicates that it and CSXT wish to continue negotiations. By letter filed on October 31, 2011, CSXT states that it agrees with the extension request until April 26, 2012, has not consummated the abandonment, has been unable to finalize negotiations with the Town, and desires to continue to negotiate for trail use/rail banking with the Town.

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.¹ Under the circumstances, a further extension of the negotiating period is warranted. See Birt v. STB, 90

¹ See Rail Abans.–Use of Rights-of-Way as Trails–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended until April 26, 2012.²

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

It is ordered:

1. The Town's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to April 26, 2012.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

² CSXT notes that, under 49 C.F.R. § 1152.29(e)(2), extension of the NITU negotiating period creates a regulatory barrier to consummation of the abandonment. For that reason, if the NITU negotiating period expires without the parties reaching an agreement, CSXT's notice of consummation will be due no later than 60 days thereafter, June 25, 2012. See 49 C.F.R. § 1152.29(e)(2).