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SERVICE DATE – MAY 1, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 694X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN MCMINN COUNTY, TENN.

Decided: May 1, 2012

This decision grants in part and denies in part an extension of time request to negotiate a trail use/rail banking agreement.

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 6.4-mile rail line, known as the Athens Branch, on its Southern Region, Huntington-West Division, KD Subdivision, extending between milepost OKW 327, at Englewood, and milepost OKW 333.4, at Athens, in McMinn County, Tenn. Notice of the filing was served and published in the Federal Register on May 21, 2009 (74 Fed. Reg. 23,926-27).

By decision and notice of interim trail use or abandonment (NITU) served on August 13, 2009 (August 2009 decision), the proceeding was reopened and a 180-day period was authorized for McMinn County (the County), the City of Athens, and the City of Englewood 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 By a series of decisions, the NITU negotiating period was extended until February 29, 2012.

By letter filed on March 21, 2012, the County submitted a request to extend the NITU negotiation period for 365 days, until February 28, 2013. The County states that the additional time is needed to continue negotiations and to conduct environmental testing and, perhaps, design engineering. In a response filed on March 22, 2012, CSXT states that it agrees to the extension request.

The County's request will be granted in part and denied in part. Although the Board has granted requests that have exceeded the customary request of 180 days in the past, the County has not demonstrated a need that would warrant an extension beyond the customary 180 days. Therefore, we will deny the County's request for a 365-day extension. However, because the

¹ The August 2009 decision also imposed two salvage-related conditions that remain in effect.

parties have agreed to an extension, we will grant the request, in part, and extend the NITU negotiation period for 180 days from February 29, 2012, to August 27, 2012.²

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 Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for 180 days from February 29, 2012, to August 27, 2012.

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 by the County to extend the NITU negotiating period is granted in part and denied in part.
2. The negotiating period under the NITU is extended until August 27, 2012.
3. This decision is effective on its service date.

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

² 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 not later than 60 days thereafter. See 49 C.F.R. § 1152.29(e)(2).

³ See Rail Abans.–Use of Rights-of-Way as Trails–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).