

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-347 (Sub-No. 3X)

FLORIDA WEST COAST RAILROAD COMPANY, INC. — ABANDONMENT
EXEMPTION — IN ALACHUA AND GILCHRIST COUNTIES, FL

Decided: October 22, 2009

By decision served on June 14, 2004, the Board granted the petition for exemption filed by Florida West Coast Railroad Company, Inc. (FWCR), for abandonment of an approximately 13-mile line of railroad extending from milepost 734.0, in Trenton, to milepost 721.0, in Newberry, in Alachua and Gilchrist Counties, FL. The exemption was subject to public use, environmental, and standard employee protective conditions.¹ The decision also stated that, if consummation was not effected by FWCR's filing of a notice of consummation by June 14, 2005, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

The deadline for FWCR to file its notice of consummation was extended through January 10, 2009, as a result of decisions served on June 28, 2005, October 7, 2005, March 15, 2006, June 14, 2006, January 16, 2007, and February 4, 2008. By decision and notice of interim trail use or abandonment (NITU) served on March 27, 2008, the Board made the exemption subject to a trail use condition authorizing a 180-day period, until September 23, 2008, for Georgetown & High Line Railroad Company, LLC (G&H), to negotiate an interim trail use/rail banking agreement with FWCR for the right-of-way involved in this proceeding. The deadlines to negotiate a NITU and to consummate the abandonment were extended to September 18, 2009, and November 17, 2009, respectively, by decisions served on November 13, 2008, and April 7, 2009.

By letter filed on September 17, 2009, G&H requests an extension of the negotiating period for 180 days. G&H states that an extension of time is necessary to complete negotiations. In a pleading filed on October 15, 2009, FWCR concurs in the request to extend the negotiating period. Additionally, FWCR requests an extension of the consummation notice filing deadline until May 16, 2010.²

¹ The public use condition has expired.

² Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, 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). Accordingly, the NITU negotiating period will be extended for an additional 180 days from September 18, 2009 (until March 17, 2010). The requested extension of the consummation deadline is also warranted, and the consummation notice filing deadline will be extended to May 16, 2010.

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 to extend the NITU negotiating period and to extend the time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended to March 17, 2010.
3. The authority to abandon must be exercised on or before May 16, 2010.
4. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary

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