

SERVICE DATE – NOVEMBER 28, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 701X)

CSX TRANSPORTATION, INC.—ABANDONMENT
EXEMPTION—IN VIGO COUNTY, IND.

Decided: November 25, 2011

By decision and notice of interim trail use or abandonment (NITU) served on August 16, 2010, the Board granted CSX Transportation, Inc. (CSXT) an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon a 3.71-mile rail line on its Southern Region, Nashville Division, CE&D Subdivision, between milepost QST 1.42 (Park Street) and milepost QST 5.13 (Spring Hill), in Terre Haute, Vigo County, Ind.¹ Also, in response to separate NITU requests by the City of Terre Haute (City) and Vigo County (County),² and in light of CSXT's willingness to enter into trail use negotiations, the Board granted a 180-day negotiating period, which period expired on February 14, 2011.³ By decision served May 3, 2011, a 180-day extension of the negotiating period was granted for both segments, which period expired on August 13, 2011.

By letter filed on September 26, 2011, the County seeks an extension of the negotiating period. The County states that it is continuing to work on a Phase II Environmental Site Assessment that must be completed before it can finalize an agreement. By letter filed on October 12, 2011, the City also seeks an extension of the negotiating period for the same reason. In responses filed on October 4, and October 18, 2011, CSXT states that it concurs with the extension requests and that it expects the transfer of the two contiguous segments to occur simultaneously. CSXT asks the Board to grant the requests and extend the period for negotiations until April 15, 2012.

¹ By letter filed December 6, 2010, CSXT notified the Board that, on that date, it consummated the abandonment of the segment between mileposts QST 1.42 and QST 2.77 and reclassified that segment as excepted track.

² The City's request was for the segment between mileposts QST 2.77 and QST 3.98; the County's request involved the segment between mileposts QST 3.98 and QST 5.13.

³ Two environmental conditions were also imposed in the August 16 decision (Section 106 historic preservation condition and a self-executing condition). The Section 106 historic condition was removed by decision served November 2, 2010, and the self-executing condition remains in effect.

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 the extensions, the Board retains jurisdiction and the NITU negotiating period may be extended.⁴ Under the circumstances, further extension of the negotiating period is warranted.⁵ 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 until April 15, 2012.⁶

This action 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 County and the City to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended until April 15, 2012.
3. This decision is effective on the date of service.

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

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

⁵ The Board has in the past granted extensions exceeding the customary 180 days. See, e.g., S. Pac. Transp. Co.—Aban. Exemption—Wendel-Alturas Line in Modoc and Lassen Counties, Cal., AB 12 (Sub-No. 184X) (served Sept. 1, 2005). As the railroad involved here has indicated its willingness to continue to negotiate for trail use for a longer period than 180 days, the negotiating period will be so extended.

⁶ Under the Board's rules at 49 C.F.R. § 1152.29(e)(2), a railroad is required to file a notice of consummation within 60 days after expiration of a legal or regulatory barrier. Because extension of the NITU negotiating period is such a barrier, CSXT's deadline for filing its notice of consummation will be June 14, 2012, if trail use negotiations are unsuccessful.