

SURFACE TRANSPORTATION BOARD

DECISION

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

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN MIDDLESEX
COUNTY, MA

Decided: November 18, 2008

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, running between milepost QBX 0.15 and the end of the line at milepost QBX 2.54, in Middlesex County, MA. 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, MA (Town), to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. By decisions served on May 23, 2007, December 17, 2007, and June 2, 2008, the negotiating period was extended until November 13, 2008. The June 2, 2008 decision also extended the deadline for CSXT to file its notice of consummation until January 12, 2009. In this decision, the Board is granting requests to extend the NITU negotiating period and the consummation deadline.

By letter filed on November 10, 2008, the Town filed a request to extend the NITU negotiating period for an additional 180 days. The Town explains that, although it and CSXT have not reached an agreement regarding the NITU, the parties desire to continue negotiations. The Town states that CSXT has completed its appraisal of the right-of-way, and that the Town's appraiser is nearly finished with his work. By letter filed on November 12, 2008, CSXT states that it concurs with the Town's extension request. CSXT also requests an extension of the consummation notice filing deadline to July 11, 2009.

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, the Board retains jurisdiction and the NITU negotiating period may be extended. 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 until May 12, 2009, and the deadline for CSXT's filing of a notice of consummation will be extended to July 11, 2009.

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. CSXT's request to extend the date by which it must file a notice of consummation is granted.
3. The negotiating period under the NITU is extended to May 12, 2009.
4. The authority to abandon must be exercised on or before July 11, 2009.
5. This decision is effective on its date of service.

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

Anne K. Quinlan
Acting Secretary