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SERVICE DATE – APRIL 30, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 684X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN SHELBY  
COUNTY, TN

Decided: April 30, 2008

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 13.34-mile rail line on CSXT's Southern Region, Nashville Division, Memphis Terminal Subdivision, between milepost ONI 210.66 near Cordova and milepost ONI 224 in Memphis, known as the Cordova Branch, in Shelby County, TN (Line). Notice of the exemption was served and published in the Federal Register on September 27, 2007 (72 FR 54977-78).

By decision and notice of interim trail use or abandonment (NITU) served on October 26, 2007 (October 2007 decision),<sup>1</sup> the proceeding was reopened and a 180-day period was authorized for the Memphis Community Connector (MCC) to negotiate an interim trail use/rail banking agreement with CSXT for the Line pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The trail use negotiating period under the NITU expired on April 23, 2008.

On April 18, 2008, MCC filed a motion (Motion) requesting a 60-day extension of the negotiating period and, jointly with Shelby County, TN (County), requesting that the NITU be modified to include the County as an additional party to MCC's trail use negotiations. In a letter filed on April 24, 2008, CSXT states that it has not consummated the abandonment of the Line and that it agrees to the extension of the NITU negotiating period. CSXT also requests an extension of the consummation notice filing deadline until August 21, 2008.

MCC states that the extension will permit the parties to continue their negotiations. Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and agrees to continue negotiations, the Board retains jurisdiction

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<sup>1</sup> The October 2007 decision also imposed one environmental and one historical condition. The environmental condition required CSXT to consult with the National Geodetic Survey (NGS) and notify NGS 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station marker. That condition remains in effect. The historic preservation condition was removed in a decision served on December 20, 2007, in this proceeding.

and the NITU negotiating period may be extended.<sup>2</sup> Under the circumstances, extension of the negotiating period and extension of the consummation deadline are 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 from April 23, 2008, to June 22, 2008, and the consummation notice filing deadline will be extended until August 21, 2008.

MCC states that it and the County have been cooperating to create a public trail on the Line. According to MCC, it has taken the lead in raising the initial capital to fund the acquisition of the Line and develop the trail. MCC and the County intend that the County's participation will facilitate negotiations with CSXT and that the County will ultimately assume control of the trail (if acquired). For those purposes, the County states that it adopts as its own the statement filed by MCC in this proceeding on October 5, 2007, which was a statement of willingness to assume full responsibility for the management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and an acknowledgement that the use of the right-of-way for trail purposes is subject to future reactivation for rail service.

Although the County did not submit its own statement of willingness to assume financial responsibility, its adoption of MCC's statement meets the requirements of 49 CFR 1152.29(a)(2) and (3). Accordingly, the request to modify the NITU to include the County will be granted.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The negotiating period under the NITU is extended to June 22, 2008.
3. The authority to abandon must be exercised on or before August 21, 2008.
4. The NITU is modified to include the County as an additional party to MCC's trail use negotiations under the NITU. Otherwise, the NITU remains unchanged.

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

5. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary