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SERVICE DATE – OCTOBER 2, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 613X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN JEFFERSON COUNTY, AL

Decided: October 1, 2008

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 16.47-mile rail line extending from milepost ONC 384.00 at Black Creek to milepost ONJ 400.47 at West Jefferson, in Jefferson County, AL. Notice of the exemption was served and published in the Federal Register on September 22, 2003 (68 FR 55085).

By decision and notice of interim trail use or abandonment (NITU) served October 21, 2003,<sup>1</sup> the proceeding was reopened and a 180-day period was authorized for the Jefferson County Commission (County) 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). The trail use negotiation period under the NITU was extended several times, with the decision served April 5, 2007, extending the negotiation period until October 3, 2007.

By decision served on October 2, 2007, the Board vacated the NITU served on October 21, 2003, and issued a replacement NITU substituting the City of Fultondale, AL (the City), as the interim trail use proponent in lieu of the County with respect to the 16.47-mile line. The Board also authorized a new, 180-day negotiation period for the City and CSXT, extending from October 2, 2007, until March 30, 2008.

By decision served on April 3, 2008, the new trail use negotiation period under the NITU was extended to September 26, 2008. The April 2008 decision also granted a request from CSXT to extend the consummation notice filing deadline until November 25, 2008.

On September 25, 2008, the City submitted a request for an additional 180-day extension of the negotiating period. The City states that, during the most recent extension period, it

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<sup>1</sup> The October 21, 2003 decision also imposed an environmental condition that required CSXT to provide the National Geodetic Survey with 90 days' notice prior to any salvage activities in order to plan the relocation of three geodetic station markers that may be affected by the abandonment. The condition remains in effect.

ordered and has received a current appraisal of the right-of-way and is in the process of submitting a revised Memorandum of Agreement and Purchase Agreement to CSXT. The City also states that, while the parties continue to work diligently to reach an agreement, they did not anticipate being able to complete their negotiations by the September 26, 2008 deadline and they want to continue trail use negotiations.

By letter dated September 25, 2008, CSXT concurred in the request to extend the negotiating period. Additionally, CSXT requested an extension of the consummation notice filing deadline until May 24, 2009.

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.<sup>2</sup> 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 from September 26, 2008, to March 25, 2009, and the consummation notice filing deadline will be extended from November 25, 2008, until May 24, 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 requests by the City for an additional 180-day NITU negotiating period and by CSXT to extend the time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended to March 25, 2009.
3. The authority to abandon must be exercised on or before May 24, 2009.

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

4. This decision is effective on its date of service.

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

Anne K. Quinlan  
Acting Secretary