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SERVICE DATE – FEBRUARY 13, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 694X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–  
IN MCMINN COUNTY, TENN.

Decided: February 12, 2015

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 6.4-mile rail line, known as the Athens Branch, on its Southern Region, Huntington-West Division, KD Subdivision, between milepost OKW 327.0, at Englewood, and milepost OKW 333.4, at Athens, in McMinn County, Tenn. Notice of the exemption was served and published in the Federal Register on May 21, 2009 (74 Fed. Reg. 23,926).

By decision and notice of interim trail use or abandonment (NITU) served on August 13, 2009 (August 2009 decision), the proceeding was reopened and a 180-day period was authorized for McMinn County (the County), the City of Athens, and the City of Englewood to negotiate with CSXT for an interim trail use/rail banking agreement for the 6.4-mile line under § 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.<sup>1</sup> By a series of decisions, with the latest decision served on August 19, 2013, the NITU negotiating period was extended until February 18, 2014.

In a letter filed on March 12, 2014, the County notified the Board that it had completed trail use negotiations for the purchase of a portion of the line between milepost OKW 328.47 and milepost OKW 333.4, and requested another 180-day extension to negotiate an interim trail use/rail banking agreement for the remaining portion of the line between milepost OKW 327.0 and milepost OKW 328.47. By several decisions, with the latest decision served on August 25, 2014, the NITU negotiation period was extended until February 13, 2015.

In a letter filed on December 22, 2014, CSXT notified the Board that it has terminated trail use negotiations with the County for a 0.79-mile portion of the line previously subject to negotiations between milepost OKW 332.61 and milepost OKW 333.4. CSXT requests that the Board vacate the NITU for the 0.79-mile portion and issue a revised NITU for the remaining portion of the line between milepost OKW 327.0 and milepost OKW 332.61. CSXT states upon

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<sup>1</sup> The August 2009 decision also imposed two salvage-related conditions that remain in effect.

receipt of the revised NITU, CSXT will consummate the abandonment of the 0.79-mile line.<sup>2</sup> In the letter, CSXT also states that it has entered into an agreement with the County for an interim trail use/rail banking agreement for the portion of the line between milepost OKW 328.4 and milepost OKW 332.61. CXST states that an appropriate notice regarding that agreement will be submitted to the Board in the near future.

On December 29, 2014, the County submitted a request to further extend the NITU negotiation period for 180 days, from February 13, 2015, until August 12, 2015, for the portion of the line between milepost OKW 327.0 and milepost 328.47. In a letter filed on December 29, 2014, CXST states that it agrees to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for a portion of the line and is willing to continue trail use negotiations for that portion of the line, the Board retains jurisdiction, and the NITU negotiating period may be extended.<sup>3</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 Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiation period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period for the portion of the line between milepost OKW 327.0 and milepost OKW 328.47 will be extended for an additional 180 days from February 13, 2015, until August 12, 2015. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). The NITU for the portion of the line between milepost 332.61 and milepost 333.4 is vacated.

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 NITU served on August 13, 2009, is modified, and the NITU for the portion of the line between milepost 332.61 and milepost 333.4 is vacated.
3. The County's request to extend the NITU negotiating period for the NITU as modified for an additional 180 days is granted.

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<sup>2</sup> The two salvage-related conditions imposed in the August 2009 decision are not barriers to CSXT's consummation of this portion of the line.

<sup>3</sup> See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

4. The NITU negotiating period is extended from February 13, 2015, to August 12, 2015, for the portion of the line from milepost OKW 328.47 to milepost OKW 327.0.

5. If an interim trail use/rail banking agreement is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

6. This decision is effective on its service date.

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