

41887
DO

SERVICE DATE – SEPTEMBER 27, 2011

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: September 26, 2011

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 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, Ala. Notice of the exemption was served and published in the Federal Register on September 22, 2003 (68 Fed. Reg. 55,085).

By decision and notice of interim trail use or abandonment (NITU) served October 21, 2003, 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).¹ 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, Ala. (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 a series of decisions, the most recent served on April 5, 2011, the trail use negotiation period under the NITU was extended to September 11, 2011. In this decision, the Board is granting the request by the City to extend further the NITU negotiating period.

By letter filed on September 9, 2011, the City submitted a request for an additional 180-day extension of the negotiating period. The City states that, during the last extension period, the negotiations between the parties had to be put on hold because of the destruction caused by severe tornadoes that struck the area. The City states that it wishes to restart the negotiating process and requests a 180-day extension to complete the negotiations. By letter filed on

¹ That decision also imposed a salvage-related condition that remains in effect.

September 12, 2011, CSXT advises that it agrees with the City's request to extend the negotiating period until March 9, 2012, to continue negotiations.²

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.³ 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. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for 180 days from September 11, 2011, to March 9, 2012.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request by the City for an additional 180-day NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to March 9, 2012.
3. This decision is effective on its date of service.

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

² CSXT notes that, under 49 C.F.R. § 1152.29(e)(2), extension of the NITU negotiating period creates a regulatory barrier to consummation of the abandonment. For that reason, if the NITU negotiating period expires without the parties reaching an agreement, CSXT's notice of consummation will be due no later than 60 days thereafter. See 49 C.F.R. § 1152.29(e)(2).

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