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SERVICE DATE - AUGUST 9, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1161X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—
IN VERMILION AND CHAMPAIGN COUNTIES, IL

Decided: August 6, 2004

On February 7, 1997, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for Champaign County Design and Conservation Foundation (CCDC Foundation) to negotiate an interim trail use/rail banking agreement with Consolidated Rail Corporation (Conrail) for approximately 24.50 miles of railroad known as the Pekin Secondary Track from approximately milepost 4.00 to approximately milepost 28.50, in Vermilion and Champaign Counties, IL. At the request of the CCDC Foundation and CSX Transportation, Inc. (CSXT), which is the successor to Conrail's interest in this proceeding, the negotiation period under the NITU was extended several times; the latest extension was scheduled to expire on July 30, 2004.¹

On July 28, 2004, CSXT filed a request for an extension of the negotiating period until January 30, 2005. CSXT states that it and CCDC have been unable to finalize trail use negotiations. Additionally, CSXT requests an extension of the consummation notice filing deadline until January 30, 2005. The Board's regulations at 49 CFR 1152.29(e)(2) require the filing of a notice of consummation within 1 year from the service date of the decision authorizing an abandonment, but only if there are no legal or regulatory barriers to consummation at that time. The trail use condition imposed in this proceeding is a regulatory barrier to consummation (see 49 CFR 1152.29(e)(2)). Pursuant to 49 CFR 1152.29(e)(2), CSXT has 60 days following the satisfaction, removal, or expiration of imposed conditions to file a notice of consummation of the abandonment. To provide certainty to CSXT, however, the Board will provide that the notice of consummation need not be filed until January 30, 2005.

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

¹ The most recent extension of the negotiation period under the NITU was authorized by decision served January 8, 2004.

retains jurisdiction and the NITU negotiation period may be extended.² Under the circumstances, an extension of the trail use 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) cert. denied, 519 U.S. 1149 (1997).³ Because an extension of the consummation notice filing deadline and the additional NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d), and the rail carrier has indicated its willingness to continue negotiations, the requested extension will be granted. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990). Accordingly, the NITU negotiating period and the consummation notice filing deadline will be extended until January 30, 2005.

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

It is ordered:

1. CSXT's request for an extension of the negotiating period and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended until January 30, 2005.
3. The authority to abandon must be exercised on or before January 30, 2005.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

² Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

³ See Rail Abandonment—Supplemental Trails Act Procedures, 4 I.C.C.2d 152 (1987).