

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-347 (Sub-No. 3X)

FLORIDA WEST COAST RAILROAD COMPANY, INC. — ABANDONMENT
EXEMPTION — IN ALACHUA AND GILCHRIST COUNTIES, FL

Decided: November 12, 2008

By decision served on June 14, 2004, the Board granted the petition for exemption filed by Florida West Coast Railroad Company, Inc. (FWCR), for abandonment of an approximately 13-mile line of railroad extending from milepost 734.0, in Trenton, to milepost 721.0, in Newberry, in Alachua and Gilchrist Counties, FL. The exemption was subject to public use, environmental, and standard employee protective conditions.¹ The decision also stated that, if consummation was not effected by FWCR's filing of a notice of consummation by June 14, 2005, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. The deadline for FWCR to file its notice of consummation was extended through January 10, 2009, as a result of decisions served on June 28, 2005, October 7, 2005, March 15, 2006, June 14, 2006, January 16, 2007, and February 4, 2008. By decision and notice of interim trail use or abandonment (NITU) served on March 27, 2008, the Board made the exemption subject to a trail use condition authorizing a 180-day period, until September 23, 2008, for Georgetown & High Line Railroad Company, LLC (G&H), to negotiate an interim trail use/rail banking agreement with FWCR for the right-of-way involved in this proceeding. In this decision, the Board is extending the NITU negotiating period and the deadline for consummation of the abandonment.

By letter filed on September 22, 2008, G&H requests an extension of the negotiating period for 180 days. G&H states that an extension of time is necessary to complete negotiations. In an electronic pleading filed on October 13, 2008, FWCR concurs in the request to extend the negotiating period. Additionally, by electronic pleading filed on October 27, 2008, FWCR requests an extension of the consummation notice filing deadline until May 11, 2009.²

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may

¹ The public use condition has expired.

² Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

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. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for an additional 180 days from September 23, 2008 (until March 22, 2009). The requested extension of the consummation deadline is also warranted, and the consummation notice filing deadline will be extended to May 11, 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 to extend the NITU negotiating period and to extend the time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended to March 22, 2009.
3. The authority to abandon must be exercised on or before May 11, 2009.
4. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary

³ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).