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SERVICE DATE – JUNE 16, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 684X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN SHELBY
COUNTY, TN

Decided: June 15, 2009

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 13.34-mile rail line on CSXT's Southern Region, Nashville Division, Memphis Terminal Subdivision, between milepost ONI 210.66 near Cordova and milepost ONI 224 in Memphis, known as the Cordova Branch, in Shelby County, TN (Line). Notice of the exemption was served and published in the Federal Register on September 27, 2007 (72 FR 54977-78).

By decision and notice of interim trail use or abandonment (NITU) served on October 26, 2007 (October 2007 decision),¹ the proceeding was reopened and a 180-day period was authorized for the Memphis Community Connector (MCC) to negotiate an interim trail use/rail banking agreement with CSXT for the Line pursuant to the National Trails System Act, 16 U.S.C. 1247(d). By decision served on April 30, 2008 (April 30 decision), the NITU was modified to include Shelby County, TN (the County), as an additional party to MCC's trail use negotiations. The April 30 decision also extended the trail use negotiating period under the NITU until June 22, 2008, and extended the deadline for CSXT to file a notice of consummation until August 21, 2008.

In separate letters filed on August 21, 2008, MCC, the County, and CSXT (the parties) requested extensions of the NITU negotiating period for two segments of the Line. The parties sought an extension of the trail use negotiating period, until November 19, 2008, for the segment of the Line from MP ONI 224 (VS 11812+37) to MP ONI 216.92 (VS 11439+97) (Memphis Segment) and an extension, until June 22, 2009, for the segment of the Line from MP ONI 210.66 to MP ONI 216.92 (Cordova Segment). By decision served on August 21, 2008, the trail use negotiating periods were extended until November 19, 2008, for the Memphis Segment and

¹ The October 2007 decision also imposed one environmental and one historic preservation condition. The environmental condition required CSXT to consult with the National Geodetic Survey (NGS) and notify NGS 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station marker. That condition remains in effect. The historic preservation condition was removed in a decision served on December 20, 2007, in this proceeding.

until June 22, 2009, for the Cordova Segment. By decisions served on December 2, 2008, February 13, and April 8, 2009, the trail use negotiating period for the Memphis Segment was extended until January 30, March 31, and June 30, 2009, respectively.

In a letter filed on May 29, 2009, the parties request extensions of the NITU negotiating period for both segments of the Line. First, the parties seek an extension of the trail use negotiating period, until September 30, 2009, for the Memphis Segment. The parties state that, although they have concluded their negotiation of a purchase agreement for the Memphis Segment, they have not yet been able to complete the various contingencies to consummate the purchase and sale.

Second, the parties seek an extension of the trail use negotiating period, until June 30, 2010, for the Cordova Segment. The parties indicate that, because they have not consummated the sale and purchase of the Memphis Segment, they have not yet begun negotiations over the Cordova Segment. The parties request a lengthier extension to negotiate the sale and purchase of the Cordova Segment to avoid the repeated extension requests that were needed for the Memphis Segment.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating periods and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating periods may be extended.² Accordingly, the NITU negotiating period will be extended until September 30, 2009, for the Memphis Segment and until June 30, 2010, for the Cordova Segment.³ Given the time that has elapsed since abandonment was granted, the parties are urged to conclude their negotiations so that further extensions are not necessary.

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 of the parties to extend the NITU negotiating periods for both segments of the Line is granted.
2. The negotiating period under the NITU for the Memphis Segment is extended to September 30, 2009.

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

³ An extension to June 30, 2010, provides a period that is longer than 180 days but is appropriate under these circumstances. The 180-day period is not statutory. It was adopted in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 605 (1986), to promote the expeditious conclusion of negotiations.

3. The negotiating period under the NITU for the Cordova Segment is extended to June 30, 2010.

4. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary