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SERVICE DATE – MARCH 3, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1073X

ALABAMA & FLORIDA RAILWAY CO., INC.—ABANDONMENT EXEMPTION—
IN GENEVA, COFFEE AND CONVINGTON COUNTIES, ALA.

Decided: March 3, 2015

Alabama & Florida Railway Co., Inc. (A&F) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 42.9-mile line of railroad between milepost 581.3 at Andalusia, Ala., and milepost 624.2 at Geneva, Ala. Notice of the exemption was served and published in the Federal Register on August 9, 2011 (76 Fed. Reg. 48,941). The exemption became effective on September 8, 2011.

By decision served on April 24, 2012, the proceeding was reopened and a notice of interim trail use or abandonment (NITU) was issued. A 180-day period was authorized for the Alabama Trails Commission (ATC) to negotiate an interim trail use/rail banking agreement with A&F and CSX Transportation, Inc. (CSXT)¹ for the right-of-way pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).

By a series of subsequent decisions, the negotiating period under the NITU was extended several times.² Most recently, by decision served on September 15, 2014, the Board extended the negotiating period to December 11, 2014. The Board reminded ATC that it was to serve any further requests to extend the NITU negotiating period in this proceeding on both A&F and CSXT, as ATC had failed to serve the extension request at issue on A&F.

On December 18, 2014, ATC filed a request for an extension of the negotiating period for an additional 120 days “to continue negotiations with [CSXT].” By letter filed on December 19, 2014, A&F informed the Board that ATC had not served its extension request on A&F and requested that the Board strike ATC’s request as improperly filed.

¹ In its verified notice of exemption, A&F stated that it does not own title to the real property comprising the line’s right-of-way (ROW) but that the title remains with CSXT. According to A&F, when the line was sold in 1986 to an unaffiliated short line railroad predecessor of A&F (Alabama & Florida Railroad, Inc., or A&F Railroad), CSXT’s predecessor, Seaboard System Railroad, Inc., conveyed to A&F Railroad the common carrier obligation associated with the line but retained for itself an ownership interest in the underlying real estate and remained as a lessor of the line’s ROW. A&F stated that it acquired the line from A&F Railroad subject to this arrangement with CSXT.

² See decisions served on November 18, 2013, December 24, 2013, and May 6, 2014.

On February 5, 2015, the Board ordered ATC to serve its December 18 extension request on A&F and certify to the Board that it had done so by February 12, 2015. In the same decision, the Board directed CSX and A&F to reply to ATC's extension request by February 19, 2015.

On February 6, 2015, CSXT consented to an extension of the NITU negotiating period until April 20, 2015. On February 19, 2015, A&F filed a letter indicating that ATC's extension request was served upon it and that A&F agrees to an extension of the NITU negotiating period until April 20, 2015. Also on February 19, ATC filed a letter, which it served on all parties, including A&F, describing its attempt to serve A&F and its recent conversation with A&F regarding the requested extension.

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.³ Here, both CSXT and A&F consent to an extension until April 20, 2015. 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.

The Board's February 5 decision postponed the deadline for filing a notice of consummation until further order of the Board. Under 49 C.F.R. § 1152.29(e)(2), a rail carrier has 60 days from the date of satisfaction, expiration, or removal of a legal or regulatory barrier to consummation in which to file a notice of consummation. The NITU negotiating period that is being extended today is a regulatory barrier to consummation, as is interim trail use. See, e.g., CSX Transp., Inc.—Aban. Exemption—in Ware Cnty., Ga., AB 55 (Sub-No. 675), slip op. at 2 n.3 (STB served Oct. 18, 2012); Consummation of Rail Line Abans. That Are Subject to Historic Pres. & Other Envtl. Conditions, EP 678, slip op. at 2 (STB served April 23, 2008). Therefore, the deadline to file a notice of consummation will hereby be reestablished in accordance with 49 C.F.R. § 1152.29(e)(2).

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

It is ordered:

1. The NITU negotiating period is extended to April 20, 2015.

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

2. The deadline to file a notice of consummation is reestablished in accordance with 49 C.F.R. § 1152.29(e)(2).

3. This decision is effective on its service date.

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