

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1020 (Sub-No. 1X)

EAST PENN RAILROAD, LLC–ABANDONMENT EXEMPTION–  
IN MONTGOMERY COUNTY, PA.

Decided: April 13, 2011

East Penn Railroad, LLC (ESPN) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F–Exempt Abandonments to abandon a 2.14-mile line of railroad between milepost 0.0 in the Borough of Bridgeport, and milepost 2.14 at Henderson Road in Upper Merion Township, in Montgomery County, Pa. Notice of the exemption was served and published in the Federal Register on September 3, 2010 (75 Fed. Reg. 54,215-16).

By decision and notice of interim trail use or abandonment (NITU) served October 5, 2010, the proceeding was reopened and a 180-day period was authorized for Montgomery County, Pa. (County) to negotiate, under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), an interim trail use/rail banking agreement with ESPN for a 2.0-mile portion of the right-of-way that extends between milepost 0.0 in the Borough of Bridgeport, and milepost 2.0 in Upper Merion Township, in Montgomery County, Pa. (County right-of-way).<sup>1</sup> The trail use negotiation period under the NITU expired on April 4, 2011.

By letter filed on April 4, 2011, the County submitted a request for a 180-day extension of the negotiating period for the County right-of-way, which would run until October 1, 2011. The County expressed confidence that an agreement would be reached shortly. By letter filed on April 5, 2011, ESPN advised that it agrees to the extension request for that portion of the line.

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.<sup>2</sup> 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 April 4, 2011, to October 1, 2011 for the County right-of-way.

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<sup>1</sup> That decision also imposed a public use condition, which expired on April 3, 2011, and may not be extended.

<sup>2</sup> See Rail Abans.–Use of Rights-of-Way as Trails–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

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 County for an additional 180-day NITU negotiating period for the County right-of-way is granted.

2. The negotiating period under the NITU is extended to October 1, 2011.

3. This decision is effective on its date of service.

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