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SERVICE DATE – NOVEMBER 18, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1073

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

Decided: November 18, 2013

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 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 involved in this proceeding pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).² By a series of decisions, the trail use negotiation period was extended several times, most recently until October 16, 2013.

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 ATC previously had sought a NITU by request filed on August 17, 2011. At that time, although CSXT agreed to trail use negotiations, A&F did not. Because trail use negotiations under the Trails Act are voluntary and A&F, the carrier seeking abandonment (and thus the appropriate carrier to negotiate for trail use), did not agree to negotiate, the Board denied that NITU request by decision served September 7, 2011. In granting ATC's second request for a NITU on April 24, 2012, the Board noted that A&F had stated that it did not object to trail use negotiations and had entered into an agreement with CSXT granting CSXT the right to negotiate trail use on behalf of both CSXT and A&F.

On October 17, 2013, ATC filed a request for an extension of the negotiating period for an additional 180 days. ATC states that it remains engaged in discussions with CSXT. As such, ATC requests an extension of time to conclude negotiations and states that CSXT agrees to the request.

By letter filed on October 21, 2013, A&F states that, as it previously advised the Board and ATC in 2012,³ A&F would oppose any extension request if it was not consulted in advance. As such, A&F states that it opposes ATC's request to extend the NITU negotiation period by another 180 days.

It is unclear whether the agreement A&F has mentioned in the past granting CSXT the right to negotiate interim trail use/rail banking on behalf of both CSXT and A&F is still effective, and if so, whether it permits CSXT unilaterally to agree to an extension of the NITU negotiating period. Regardless of the terms of the parties' contract, however, A&F, the carrier we previously have noted is the appropriate carrier to negotiate for trail use, has objected to the NITU extension. The Board's authority to impose trail use conditions is limited because the Board's role under the Trails Act is largely ministerial, see Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001), and the trail use program is voluntary and consensual between the railroad and the trail user, see Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Because A&F does not consent to further interim trail use/rail banking negotiations, the request to extend the negotiating period under the NITU will be denied.

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

It is ordered:

1. ATC's request to extend the NITU negotiating period is denied.
2. This decision is effective on its service date.

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

³ See A&F letter filed October 19, 2012.