

SERVICE DATE – APRIL 8, 2009

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: April 7, 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) (Trails Act). 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 decision served on December 2, 2008, the trail use negotiating period for the Memphis Segment was extended until January 30, 2009, and, by decision served on February 13, 2009, it was further extended until March 31, 2009.

In a letter filed on March 31, 2009, the parties request another extension of the negotiating period, until June 30, 2009, for the Memphis Segment. The parties state that they have nearly concluded their negotiation of a purchase agreement for the Memphis Segment, which was approved by the County Commission on March 30, 2009. They state that the transaction is scheduled to close on June 1, 2009, and they seek additional time for closing the transaction and to account for contingencies that might delay closing.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and agrees to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances, 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 until June 30, 2009, for the Memphis Segment.

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 period is granted.
2. The negotiating period under the NITU for the Memphis Segment is extended to June 30, 2009.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary

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