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SERVICE DATE – JANUARY 20, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 117 (Sub-No. 7X)

ELGIN, JOLIET & EASTERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN LAKE COUNTY, IND.

Decided: January 19, 2011

Elgin, Joliet & Eastern Railway Company (EJ&E) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon its line of railroad between milepost 46.10 and milepost 48.28, a distance of 2.18 miles, in Hammond, Lake County, Ind. Notice of the exemption was served and published in the Federal Register on June 8, 2010 (75 Fed. Reg. 32,535-36). The exemption became effective on July 8, 2010.

By decision and notice of interim trail use or abandonment (NITU) served on July 7, 2010 (July 7 decision), the proceeding was reopened and a 180-day period was authorized for both the Indiana Trails Fund, Inc. (ITFI), and the Northwest Indiana Railroad Preservation Society (NIRPS) to negotiate an interim trail use/rail banking agreement with EJ&E for the right-of-way involved in this proceeding, pursuant to the National Trail System Act, 16 U.S.C. § 1247(d). The trail use negotiating period under the NITU expired on January 3, 2011. The July 7 decision also imposed a condition permitting public use negotiations under 49 U.S.C. § 10905 for a 180-day period from the July 8, 2010 effective date of the exemption (until January 4, 2011).¹

On January 4, 2011, ITFI filed a request for an extension of the trail use negotiating period “of 180 days, to July 3, 2011,” and an extension “of 180 days to July 4, 2011” for the public use condition.² On January 5, 2011, EJ&E filed its response, stating that it agrees with ITFI’s NITU extension request.³

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed NITU negotiating period and has agreed to continue negotiations, the Board

¹ In addition to the interim trail use and public use conditions, the July 7 decision also imposed 2 salvage conditions, which remain in effect.

² In both cases, an extension to the requested date would be 181 days, not 180.

³ NIRPS, the other potential trail sponsor for whom the NITU was established, has not sought an extension of its negotiating period under the NITU.

retains jurisdiction and the NITU negotiating period may be extended.⁴ 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 Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period for ITFI will be extended until July 3, 2011.

ITFI's request to extend the public use condition, however, will be denied. It is well settled that 180 days is the maximum period permitted by statute for a public use condition and that the condition may not be extended beyond that time. See 49 U.S.C. § 10905; 49 C.F.R. § 1152.28(b); and Rail Abans.—Public Use Conditions—Revision, 8 I.C.C.2d 392, 395-98 (1992).

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

It is ordered:

1. ITFI's request to extend the NITU negotiating period is granted.
2. The negotiating period for ITFI under the NITU is extended until July 3, 2011.
3. ITFI's request to extend the public use condition is denied.
4. This decision is effective on its service date.

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

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