

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 511 (Sub-No. 5X)

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS—ABANDONMENT
EXEMPTION—IN HOWARD COUNTY, IND.

Decided: March 15, 2011

In this decision, an extension is granted for negotiating a trail use/rail banking agreement. Central Railroad Company of Indianapolis (CERA) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 2.84 miles of rail line on CERA's Tipton Industrial Lead between milepost 55.66 and milepost 58.5, in Howard County, Ind. Notice of the exemption was served and published in the Federal Register on July 22, 2010 (75 Fed. Reg. 42,814-15). The exemption became effective on August 21, 2010.

By decision and notice of interim trail use or abandonment (NITU) served on August 20, 2010 (August 2010 decision), the proceeding was reopened and a 180-day period was authorized for the City of Kokomo (City) to negotiate an interim trail use/rail banking agreement with CERA for 2 segments of the right-of-way totaling 2.35 miles,¹ pursuant to the National Trails System Act, 16 U.S.C. § 1247(d).²

By letter filed February 17, 2011, and amended on February 25, 2011, the City requests an extension of the negotiating period for an additional 180 days.³ The City states that, due to delays in obtaining accurate appraisals on the property, an extension is needed to allow the City

¹ The 2 segments are comprised of the right-of-way between milepost 55.66 near Gano Street and milepost 57.39 at the south right-of-way of the proposed U.S. 35, a distance of 1.73 miles, and between milepost 57.88 at the north right-of-way of the proposed U.S. 31 and milepost 58.5 at the south end of the Nickel Plate Trail, a distance of 0.62 miles.

² The August 2010 decision also imposed a 180-day public use condition, which expired on February 17, 2011, and a salvage-related condition, which remains in effect.

³ The City's letter requests an extension of "the negotiating periods ordered in item 2" of the August 2010 decision. Ordering paragraph 2 of that decision encompassed both interim trail use/railbanking negotiations and the imposed public use condition. By statute, however, the public use condition cannot be extended. See 49 U.S.C. § 10905 (permitting a public use condition to be imposed "for a period of not more than 180 days after the effective date" of the Board's order). Thus, to the extent the City's letter may be construed as a request to extend the public use condition, that request is denied.

and CERA adequate time to negotiate and execute a trail use agreement. By letter filed on February 15, 2011, CERA agrees to an extension of the NITU negotiating period for 180 days, until August 15, 2011. Additionally, CERA notes that, pursuant to 49 C.F.R. § 1152.29(e)(2), the consummation deadline automatically would be extended to October 14, 2011.⁴

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.⁵ 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). Accordingly, the NITU negotiating period will be extended for 180 days from February 16, 2011, until August 15, 2011.

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

It is ordered:

1. This proceeding is reopened.
2. The City's request to extend the NITU negotiating period is granted.
3. The NITU negotiating period is extended until August 15, 2011.
4. This decision is effective on its service date.

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

⁴ The salvage-related condition is not a barrier to consummation of the abandonment. See Consummation of Rail Line Abans. That Are Subject to Historic Pres. and Other Envtl. Conditions, EP 678, slip op. at 4 and n.2 (STB served Apr. 23, 2008). Extension of the NITU negotiating period, however, does create a regulatory barrier to consummation. For that reason, if the NITU negotiating period expires without the parties reaching an agreement, CERA's notice of consummation will be due not later than 60 days thereafter (by October 14, 2011). See 49 C.F.R. § 1152.29(e)(2).

⁵ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).