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SERVICE DATE – SEPTEMBER 15, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1073X

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

Decided: September 15, 2014

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). By a series of decisions, the trail use negotiation period was extended to October 16, 2013. The next day, ATC filed a request to extend the negotiating period for an additional 180 days. By decision served on November 18, 2013, ATC's request was denied because A&F did not consent.

On December 18, 2013, ATC requested an additional 120-day period in which to continue NITU negotiations with A&F and CSXT and indicated that both A&F and CSXT were amendable to the extension and continued negotiation. On December 24, 2013, the Board granted ATC's request and extended the NITU negotiating period to April 15, 2014. A subsequent decision served on May 6, 2014, extended the NITU negotiating period to August 13, 2014.

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.

On August 13, 2014, ATC filed a request for an extension of the negotiating period for an additional 120 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 August 18, 2014, A&F states that ATC failed to request A&F's consent to the extension of the negotiating period and ATC did not serve its August 13, 2014 letter on ATC, but that CSXT alerted A&F to ATC's letter and requests that A&F consent to another extension. To accommodate CSXT, A&F agrees to ATC's request to extend the NITU negotiating period. The Board reminds ATC to serve any further request to extend the NITU negotiating period in this proceeding on both A&F and CSXT.

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 for a portion of the line, the Board retains jurisdiction and the NITU negotiating period may be extended.² 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). An extension of the negotiation period will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the negotiating period for the line will be extended for 120 days from August 13, 2014, until December 11, 2014. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) & (h).

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 granted and the negotiating period is extended until December 11, 2014.
2. ATC shall serve any further requests to extend the NITU negotiating period on both A&F and CSXT.
3. This decision is effective on its service date.

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

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