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SERVICE DATE – MARCH 30, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 613X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN JEFFERSON COUNTY, AL

Decided: March 26, 2010

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 16.47-mile rail line extending from milepost ONC 384.00 at Black Creek to milepost ONJ 400.47 at West Jefferson, in Jefferson County, AL. Notice of the exemption was served and published in the Federal Register on September 22, 2003 (68 FR 55085).

By decision and notice of interim trail use or abandonment (NITU) served October 21, 2003, the proceeding was reopened and a 180-day period was authorized for the Jefferson County Commission (County) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ The trail use negotiation period under the NITU was extended several times, with the decision served April 5, 2007, extending the negotiation period until October 3, 2007.

By decision served on October 2, 2007, the Board vacated the NITU served on October 21, 2003, and issued a replacement NITU substituting the City of Fultondale, AL (the City), as the interim trail use proponent in lieu of the County with respect to the 16.47-mile line. The Board also authorized a new, 180-day negotiation period for the City and CSXT, extending from October 2, 2007, until March 30, 2008.

By decisions served on April 3, 2008, October 2, 2008, April 6, 2009, and September 29, 2009, the trail use negotiation period under the NITU was extended to March 20, 2010. These decisions also extended the consummation notice filing deadline until May 19, 2010. In this decision, the Board is granting the requests by the City to extend the NITU negotiating period and by CSXT to extend the time for it to exercise the abandonment authority.

On March 9, 2010, the City submitted a request, as amended by letter dated March 17, 2010, for an additional 180-day extension of the negotiating period. The City states that, during

¹ That decision also imposed an environmental condition that remains in effect.

the current extension period, the parties have been involved in the negotiation of a Right-of-Entry Agreement required for the City to conduct environmental testing under the draft Purchase Sale Agreement, and that the City has obtained conditional access to funds available through the EPA Brownfield Grant to cover the cost of that environmental testing. The City also states that it has now approved and is in the process of executing the Right-of-Entry Agreement to be submitted to CSXT for its approval and execution. The City states that, because material progress has been made in these negotiations, it requests an extension of the March 20, 2010 deadline until September 16, 2010, to gain access to the site and conduct the ESA testing work.

By letter dated March 15, 2010, CSXT has concurred in the request to extend the negotiating period until September 16, 2010. Additionally, CSXT has requested an extension of the consummation notice filing deadline until November 15, 2010.

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.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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended from March 20, 2010, to September 16, 2010, and the consummation notice filing deadline will be extended from May 19, 2010, until November 15, 2010.

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

It is ordered:

1. The requests by the City for an additional 180-day NITU negotiating period and by CSXT to extend the time to exercise its abandonment authority are granted.
2. The negotiating period under the NITU is extended to September 16, 2010.
3. The authority to abandon must be exercised on or before November 15, 2010.
4. This decision is effective on its date of service.

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

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