

SERVICE DATE - LATE RELEASE JANUARY 8, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 568X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN FRANKLIN COUNTY, PA

Decided: January 8, 2001

By decision and notice of interim trail use or abandonment (NITU) served on March 9, 1999, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by CSX Transportation, Inc. (CSXT), of a 1.9-mile portion of its line of railroad known as the Baltimore Service Lane, Lurgan Subdivision, extending between milepost BAV-20.5 at 4th Street and milepost BAV-22.4 at Commerce Street in Chambersburg, Franklin County, PA, subject to public use, trail use, and standard employee protective conditions. The March 9, 1999 decision authorized the Borough of Chambersburg (the Borough) to negotiate an interim trail use/rail banking agreement with CSXT for the line segment between the intersection of the line and Main Street at approximately milepost 20.8, and the intersection of the line and Commerce Street at approximately milepost 22.4, a distance of 1.6 miles. The negotiating period under the NITU expired on September 5, 1999. The March 9 decision also stated that, if consummation had not been effected by CSXT's filing of a notice of consummation by March 8, 2000, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.¹ By a decision served on March 22, 2000, CSXT was granted an extension of time until January 8, 2001, to file a notice of consummation. Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

¹ Subsequently, on March 12, 1999, Frederick A. Fox, Kaye A. Fox, Frederick Armstrong Fox, and Karla M. Fox (the offerors) filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase that portion of the line from Valuation Station 1096+20 (including that portion of the line that crosses Main Street) to Valuation Station 1122+30 (not including that portion of the line that crosses South Street). By a decision served on March 23, 1999, the offerors were found to be financially responsible and the effective date of the decision authorizing abandonment on that portion of the line was postponed to permit the OFA process to proceed. In a decision served on May 7, 1999, the offerors were authorized to acquire that portion of the line, and the petition for exemption as to that portion of the line was dismissed effective on the date the sale is consummated. The NITU remained in effect for that portion of the line between South Street (including that portion of the line that crosses South Street), and the intersection of the line and Commerce Street at approximately milepost 22.4.

On December 8, 2000, CSXT filed another request to extend until March 31, 2001, the time to consummate the abandonment and to file its notice of consummation. CSXT also requested that the NITU negotiating period be extended until the same date. CSXT states that it is unable to consummate the abandonment of the subject line because of continuing discussions with the offerors and the Borough.

CSXT has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation in this proceeding. Also, because CSXT has not consummated the abandonment and is willing to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances, an 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), cert. denied, 519 U.S. 1149 (1997). Accordingly, the abandonment consummation date and the NITU negotiating period will be extended until March 31, 2001.

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

It is ordered:

1. CSXT's request for an extension of time to exercise the abandonment authority, and its request to extend the NITU negotiating period, are granted.
2. The authority to abandon must be exercised on or before March 31, 2001.
3. The negotiating period under the NITU is extended until March 31, 2001.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

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