

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 591X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN CLARK AND FLOYD COUNTIES, IN

Decided: September 21, 2007

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 3.8-mile line of railroad between milepost B-50.5 near Clarksville and milepost B-54.3 near New Albany, in Clark and Floyd Counties, IN. On August 7, 2001, a decision and notice of interim trail use or abandonment (NITU) was served reopening the proceeding and authorizing a 180-day period for the Civil Town of Clarksville, IN, the City of New Albany, IN, and the City of Jeffersonville, IN (collectively, Proponents) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension decision, served on February 5, 2007, extended the negotiation period until July 24, 2007. The February 5, 2007 decision also extended the deadline for CSXT to file its notice of consummation until September 22, 2007.

On August 28, 2007, CSXT filed a request to extend the NITU negotiation period until January 20, 2008. CSXT states that it has not consummated the abandonment, has been unable to finalize negotiations with Proponents and that it desires to continue to negotiate. Additionally, CSXT requests an extension of the consummation notice filing deadline until March 20, 2008.¹

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. 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). An extension of the negotiating period would promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d).² Accordingly, the NITU negotiating period will be extended for

¹ 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.

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

an additional 180 days from July 24, 2007 (until January 20, 2008), and the consummation notice filing deadline will be extended to March 20, 2008. Given the time that has elapsed since abandonment was authorized, the parties are urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. CSXT's request to extend the NITU negotiating period and its request for an extension of time to exercise the abandonment authority is granted.
2. The negotiating period under the NITU is extended to January 20, 2008.
3. The authority to abandon must be exercised on or before March 20, 2008.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary