

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 369 (Sub-No. 7X)

BUFFALO & PITTSBURGH RAILROAD, INC.—ABANDONMENT EXEMPTION—IN
ERIE AND CATTARAUGUS COUNTIES, N.Y.

Decided: October 28, 2010

Buffalo & Pittsburgh Railroad, Inc. (BPRR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 27.6-mile line of railroad extending from milepost 8.4 in Orchard Park, in Erie County, N.Y., to milepost 36 in Ashford, in Cattaraugus County, N.Y. Notice of the exemption was served and published in the Federal Register on October 6, 2008 (73 Fed. Reg. 58,297). In this decision, the Board is granting the request by the New York State Office of Parks, Recreation and Historic Preservation (NYS Office of Parks) to extend the interim trail use negotiation period.

By decision and notice of interim trail use or abandonment (NITU) served on November 4, 2008, the proceeding was reopened and a 180-day period was authorized for NYS Office of Parks to negotiate an interim trail use/rail banking agreement with BPRR 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 By a series of decisions, the most recent served on May 6, 2010, the trail use negotiation period under the NITU was extended until October 26, 2010.

By letter dated September 28, 2010, NYS Office of Parks has requested an extension of the NITU negotiating period. In support, NYS Office of Parks states that the parties do not anticipate being able to consummate an agreement prior to the expiration date of the trail use negotiation period, but wish to continue negotiations. By letter dated October 1, 2010, BPRR advises that it agrees to the extension request and, by letter dated October 18, 2010, BPRR and NYS Office of Parks have clarified that the NITU extension request is for a 180-day period until April 24, 2011.

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

¹ In addition to interim trail use, the November 4, 2008 decision imposed 4 environmental conditions and a public use condition that expired on May 4, 2009, and that may not be extended. One of the environmental conditions was an historic preservation condition, which was removed by decision served on February 6, 2009. The other 3 environmental conditions remain in effect.

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., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for 180 days from October 26, 2010, to April 24, 2011.

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

It is ordered:

1. The NYS Office of Parks' request to extend the negotiation period is granted.
2. The negotiating period under the NITU is extended to April 24, 2011.
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).