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SERVICE DATE – FEBRUARY 15, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 471X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN LUCAS COUNTY,
OHIO

Decided: February 14, 2011

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 C.F.R. pt. 1152 Subpart F—Exempt Abandonments to abandon approximately 1.58 miles of railroad between milepost CO-12.73 and milepost CO-14.31 near Gould, in Lucas County, Ohio. Notice of the exemption was served and published in the Federal Register on August 11, 1993 (58 Fed. Reg. 42,746-47).¹ By decision and notice of interim trail use or abandonment (NITU) served on July 20, 2010 (July 2010 decision), the proceeding was reopened and a 180-day period was authorized for Metroparks of the Toledo Area (Metroparks) 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).²

On January 13, 2011, Metroparks submitted a request to extend the NITU negotiating period until June 30, 2011. Metroparks states that it has reached an agreement in principle with CSXT but that additional time is needed to complete interim trail use negotiations. In a response filed on January 18, 2011, CSXT states that it is willing to continue trail use negotiations with Metroparks until June 30, 2011.³

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.⁴ Under the

¹ The exemption became effective on September 10, 1993.

² The July 2010 decision also denied Metroparks' request for a public use condition. A historic preservation condition, imposed on September 10, 1993, remains in effect.

³ CSXT notes that, under 49 C.F.R. § 1152.29(e)(2), the requested extension of the NITU negotiating period creates a regulatory barrier to consummation of the abandonment. For that reason, if the NITU negotiating period expires without the parties having reached an agreement and the historic preservation condition is removed, CSXT's notice of consummation will be due not later than 60 days thereafter, or 60 days after the removal of the historic preservation condition if that condition remains in effect. See 49 C.F.R. § 1152.29(e)(2).

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

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 NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended from January 16, 2011, to June 30, 2011.

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

It is ordered:

1. Metroparks' request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until June 30, 2011.
3. This decision and notice is effective on its service date.

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