

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 670X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN MIDDLESEX  
COUNTY, MASS.

Decided: May 31, 2011

This decision extends the interim trail use negotiating period for the line of railroad authorized for abandonment in this proceeding.

By decision and notice of interim trail use or abandonment (NITU) served on October 25, 2006, the Board granted the petition for exemption filed by CSX Transportation, Inc. (CSXT) for abandonment of a 2.39-mile line known as the Saxonville Industrial Track, extending between milepost QBX 0.15 and the end of the line at milepost QBX 2.54, in Middlesex County, Mass. The exemption was subject to public use, environmental, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the Town of Natick, Mass. (Town), to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. In a series of decisions issued from May 23, 2007, to November 18, 2010, the negotiation period was extended until May 2, 2011. The November 18, 2010 decision also extended the deadline for CSXT to file its notice of consummation until July 1, 2011.

On May 10, 2011, the Town filed a request to extend the NITU negotiating period for an additional 180 days. The Town indicates that it and CSXT wish to continue negotiations. The Town states that it made an offer to purchase the right-of-way in December 2010, and subsequently, CSXT rejected its offer, but did not make a counter-offer. The Town hopes to meet with CSXT soon to determine if a purchase price can be agreed upon. By letter filed on May 11, 2011, CSXT states that it agrees with the extension request until October 29, 2011, has not consummated the abandonment, has been unable to finalize negotiations with the Town, and desires to continue to negotiate for trail use/rail banking with the Town. CSXT notes that, in accordance with 49 C.F.R. § 1152.29(e)(2), the consummation notice filing deadline would then be automatically extended to December 28, 2011.<sup>1</sup>

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<sup>1</sup> Extension of the NITU negotiating period does create a regulatory barrier to consummation. If the NITU negotiating period being extended here expires without the parties reaching an agreement, CSXT's notice of consummation will be due no later than 60 days thereafter, which would be by December 28, 2011, as noted by CSXT. See 49 C.F.R. § 1152.29(e)(2).

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.<sup>2</sup> Under the circumstances, a 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). Accordingly, the NITU negotiating period will be extended until October 29, 2011, and the time for CSXT to consummate the abandonment and file the notice of consummation automatically will be extended from July 1, 2011, to December 28, 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 Town's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to October 29, 2011.
3. This decision is effective on its date of service.

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

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