

33295  
DO

SERVICE DATE - JANUARY 27, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 586X)

CSX TRANSPORTATION, INC.—ABANDONMENT  
EXEMPTION—IN McMINN COUNTY, TN

Decided: January 24, 2003

A decision and notice of interim trail use or abandonment (NITU) served on July 27, 2001 (July 2001 decision), as corrected that same day, authorized CSX Transportation, Inc. (CSXT), to abandon a .84-mile segment of a line of railroad known as the Athens & Tellico Branch,<sup>1</sup> extending from milepost OKW 333.40 to milepost OKW 334.24 in Athens, McMinn County, TN, subject to trail use, public use, and standard employee protective conditions. Under the NITU, the City of Athens (City) was authorized to negotiate an interim trail use/rail banking agreement with CSXT for the entire line. The negotiating period under the NITU expired on January 23, 2002. The July 2001 decision also stated that, if consummation was not effected by CSXT's filing of a notice of consummation by July 27, 2002, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. Under 49 CFR 1152.29(e)(2), however, a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings. CSXT filed such an extension request; and, by decision served on July 26, 2002, the due date for filing a notice of consummation for that portion of the line extending between milepost OKW 333.62 and milepost OKW 334.24 was extended until January 27, 2003.<sup>2</sup>

On December 19, 2002, CSXT filed a request to further extend, until August 13, 2003, the time to consummate the abandonment and to file its notice of consummation. CSXT also requests that the NITU negotiating period be extended until June 13, 2003. CSXT submits that, as indicated in the July 27 decision, its willingness to negotiate with the City for interim trail use was conditioned on the failure of its negotiations to sell a majority of the rail line for use as an industry track for continued rail purposes. CSXT states that it recently learned that the industry is no longer interested in pursuing the purchase, but that the City is still very interested in pursuing a trail.

---

<sup>1</sup> The line is formally designated as Central Region, Appalachian Division, Athens & Tellico Branch, KD Subdivision.

<sup>2</sup> CSXT stated in its extension request that it intended to allow the abandonment authority granted for the line segment extending between milepost OKW 333.40 and milepost OKW 333.62 to expire.

CSXT has shown good cause to extend the time to consummate the abandonment and to file its notice of consummation for that portion of the line extending between milepost OKW 333.62 and milepost OKW 334.24. Also, because CSXT has not consummated the abandonment of this line segment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>3</sup> 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 NITU negotiating period will be extended until June 13, 2003, and the abandonment consummation date will be extended until August 13, 2003.

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

It is ordered:

1. CSXT's requests to extend the NITU negotiating period for that portion of the line extending between milepost OKW 333.62 and milepost OKW 334.24, and to extend the time to exercise the abandonment authority for that line segment are granted.
2. The negotiating period under the NITU is extended until June 13, 2003.
3. The authority to abandon must be exercised on or before August 13, 2003.
4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

---

<sup>3</sup> See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).