

SERVICE DATE – APRIL 16, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 718X)

CSX TRANSPORTATION, INC.—ABANDONMENT
EXEMPTION—IN ALACHUA COUNTY, FLA.

Digest:¹ In this decision, the Board grants the request of Georgetown and High Line Railway Company, LLC, for a one-year extension of the interim trail use/rail banking negotiating period.

Decided: April 16, 2020

In 2013, CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon approximately 11.62 miles of rail line on CSXT’s Southern Region, Jacksonville Division, West Coast Subdivision, between milepost AR 716.88, at High Springs, and milepost AR 726.69, at Newberry, and milepost ARB 717.11, at High Springs, and milepost ARB 718.92, at High Springs, in Alachua County, Fla. (the Line).² Notice of the exemption was served and published in the Federal Register on December 10, 2013 (78 Fed. Reg. 74,227). Since 2014, the Board has issued three notices of interim trail use or abandonment (NITUs) in this proceeding pursuant to the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. The third and current NITU was issued August 20, 2019, to Georgetown and High Line Railway Company, LLC (GHL), which now seeks an extension of that NITU. As discussed below, the Board will grant the request to extend the NITU negotiating period with CSXT for one year.

BACKGROUND

CSXT’s abandonment exemption became effective on April 28, 2014. On July 15, 2014, the proceeding was reopened and the first NITU was issued, permitting GHL to negotiate with CSXT for a 180-day period. The negotiating period expired on January 12, 2015, without a request for an extension.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² In the same jointly filed notice, Florida Northern Railroad Company, Inc., sought to discontinue service over a portion of the Line. Fla. N. R.R.—Discontinuance of Service Exemption—in Alachua Cty., Fla., Docket No. AB 507 (Sub-No. 1X).

On March 10, 2015, a second NITU was issued following a request from Alachua County (the County), a political subdivision of the State of Florida, to negotiate with CSXT. The NITU allowed the County and CSXT to negotiate until September 8, 2015. By request of the County and agreement of CSXT, that NITU was extended several times, ultimately until August 18, 2019. By decision served August 20, 2019, the County's request to further extend its NITU negotiating period was denied because CSXT did not agree to an extension. The August 20, 2019 decision also issued a third NITU, which permitted GHF to negotiate with CSXT for a 180-day period, until February 16, 2020.

On March 23, 2020, GHF requested a one-year extension until February 16, 2021, to continue to negotiate with CSXT.³ In a letter filed on April 3, 2020, CSXT agreed to GHF's requested extension.

DISCUSSION AND CONCLUSIONS

The Board recently modified its regulations regarding the number and duration of, and standard for granting, extensions of an interim trail use/rail banking negotiating period (as well as the duration of an initial negotiating period). See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019). Under the new rule, parties may request a Board order to extend an initial one-year negotiating period, and up to three one-year extensions of the initial period may be granted if the trail sponsor and railroad agree. Additional one-year extensions, beyond three extensions of the initial period, are not favored but may be granted if the trail sponsor and railroad agree and "extraordinary circumstances" are shown. 49 C.F.R. § 1152.29(c)(1)(ii), (d)(1)(ii). The Board's decision adopting the new rule also provided for a transitional measure, which permits parties currently engaged in negotiations under an existing NITU that was originally issued before February 2, 2017, to request, without showing extraordinary circumstances, an additional one-year extension beyond the four-year anniversary of the issuance of the NITU. See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al., slip op. at 11.

The Board explained that the purpose of the new rule was to promote administrative efficiency, clarity, and finality in the Trails Act process. *Id.* at 6-7, 9. Although the Board considered adopting a more liberal standard for granting extensions beyond the first three, the Board found that such a standard would undercut its goals in adopting the new rule. *Id.* The Board anticipated that the new rule would give parties clear deadlines that would better incentivize them to conclude their negotiations and enter into an agreement in a more timely manner, "which would both give landowners more certainty by providing a timeline for the conclusion of negotiations and conserve Board resources." *Id.*

³ Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); see also 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).

Here, between 2014 and 2019, three NITUs were issued providing GHF a total of one year and the County a total of more than four years to negotiate with CSXT for interim trail use/rail banking. The Board will consider the negotiating periods cumulatively for purposes of determining both whether the “extraordinary circumstances” standard applies and the availability of the one-year transitional extension. Considering the NITU negotiating periods cumulatively is consistent with the Board’s goal of providing clear deadlines that will promote efficiency, clarity, and finality in the Trails Act process. See id. at 7, 9. In contrast, if the Board were to consider only the time a specific trail sponsor negotiated under an individual NITU, the purpose of the new rule would be significantly undermined. Allowing the clock to be “reset” with each issuance of a new NITU would reintroduce considerable uncertainty and the potential for abuse, and therefore undermine the Board’s goal of promoting efficiency, clarity, and finality in the Trails Act process. See id. at 11.

Here, the total time that trail sponsors and CSXT have negotiated under the NITUs issued in the proceeding exceeds the four-year period provided by the new rule. See id. However, because the first NITU was issued before February 2, 2017, a transitional one-year extension is appropriate, as contemplated in the Board’s final rule decision. See id. Because CSXT consents to GHF’s extension request, the extension of the NITU negotiating period until February 16, 2021, will be granted. Any further extension request, however, would require a showing of extraordinary circumstances. See id. at 10-11.

It is ordered:

1. GHF’s request for an extension of the NITU negotiating period is granted; the NITU negotiating period is extended until February 16, 2021.
2. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.