

SERVICE DATE – AUGUST 19, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 794X)

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

Decided: August 18, 2020

On August 20, 2019, CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 0.86-mile segment of rail line located between mileposts ARE 897.57 and ARE 898.43 in downtown St. Petersburg, Pinellas County, Fla. (the Line). Notice of the exemption was served and published in the Federal Register on September 9, 2019 (84 Fed. Reg. 47,339), and the exemption became effective on October 9, 2019.

On August 29, 2019, the City of St. Petersburg (the City) filed a request for issuance of a public use condition under 49 U.S.C. § 10905 and (as supplemented on September 4, 2019) a request for issuance of a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.¹ The Georgetown and High Line Railway Company, LLC (GHL), also requested a NITU on August 29, 2019. In a response filed on September 3, 2019, CSXT notified the Board that it was willing to negotiate an agreement for interim trail use/rail banking with GHL but not with the City.

By decision and notice of interim trail use or abandonment served January 13, 2020 (Director Order), GHL's request for a NITU was granted, authorizing GHL and CSXT to negotiate for interim trail use/rail banking until July 11, 2020.² The Director Order also denied the City's request for a NITU, noting that the interim trail use/rail banking program is voluntary and that CSXT did not agree to negotiate for interim trail use/rail banking with the City.

¹ In City of St. Petersburg, Fla.—Adverse Abandonment—CSX Transportation Inc. in Pinellas County, Fla., Docket No. AB 1289, the City initiated a proceeding on July 23, 2019, seeking a third-party, or “adverse,” abandonment of the Line and indicating that it was interested in creating a public park and extension of the existing Pinellas Trail on the Line's right-of-way. Subsequently, CSXT filed its verified notice in this docket. By decision served January 3, 2020, in Docket No. AB 1289, the Board dismissed the adverse abandonment proceeding without prejudice, noting that CSXT had been authorized to abandon the Line in this docket. See City of St. Petersburg, AB 1289, slip op. at 1 (STB served Jan. 3, 2020).

² In an earlier decision served on October 8, 2019, a public use condition under 49 U.S.C. § 10905 and two salvage-related conditions were imposed, among other things.

Director Order, AB 55 (794X), slip op. at 2. The City subsequently appealed the Director Order to the Board.

By decision served June 22, 2020, the Board denied the City's appeal to overturn the Director Order granting GHL's NITU request. However, the Board stated that implicit in the Trails Act is an expectation that the parties intend to use the NITU negotiating period to actively pursue interim trail use/rail banking and noted that the combination of unusual circumstances here, taken together, could raise concerns about the intent of CSXT and GHL to actually engage in negotiations. CSX Transp., Inc.—Aban. Exemption—in Pinellas Cty., Fla., AB 55 (Sub-No. 794X), slip op. at 7 (STB served June 22, 2020). Therefore, the Board reminded the parties that prospective trail sponsors and railroads are expected to operate diligently and in good faith in concluding their interim trail use rail/banking negotiations. Id. at 8. Given the circumstances, the Board instructed that, "in any future extension request, GHL must describe the efforts made to negotiate with CSXT and the progress of those negotiations." Id.

On July 10, 2020, GHL filed a request for a one-year extension of the NITU negotiating period until July 11, 2021, to which CSXT consented by letter filed July 13, 2020. GHL states that it has engaged in multiple good faith discussions with CSXT in an effort to negotiate for interim trail use/rail banking. (GHL NITU Extension Req. 1.) According to GHL, it has conferred with CSXT regarding: (1) title to the real property; (2) valuation of the real property; (3) any purported restrictions on disposal of the property by GHL; (4) method of payment by GHL; (5) assumption by GHL of any legal liability arising out of the transfer or use of the Line, including the acquisition of insurance; (6) payment by GHL of any and all taxes that may be levied or assessed against the Line; and (7) other issues. (Id. at 1-2.)

GHL's request to extend the NITU negotiating period until July 11, 2021 will be granted. See 49 C.F.R. § 1152.29(d)(1)(ii). However, given the unusual circumstances here and the Board's June 22, 2020 decision noted above, in any future extension request GHL must describe, in specific detail, the progress of its negotiations, including: the dates of discussions and other substantive communications with CSXT and whether any principals of either party participated in the discussions and communications; the issues resolved in those discussions and communications; the issues that remain outstanding and the specific actions that need to be taken before an agreement can be reached; and when GHL estimates those issues will be resolved and those actions taken.

It is ordered:

1. GHL's request for an extension of the NITU negotiating period is granted; the NITU negotiating period is extended until July 11, 2021.
2. In any future NITU extension request, GHL must provide additional information concerning its negotiations with CSXT, as described above.
3. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.