

SERVICE DATE – OCTOBER 25, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 763X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN LOGAN COUNTY, W. VA.

Decided: October 25, 2021

In September 2016, 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 3.29-mile rail line on its Southern Region, Florence Division, Logan Subdivision, between milepost CLX 0.0 near Man and milepost CLX 3.29 near Garnette, in Logan County, W. Va. Notice of the exemption was served and published in the Federal Register on September 27, 2016 (81 Fed. Reg. 66,322).

On October 26, 2016, the proceeding was reopened and a notice of interim trail use or abandonment (NITU) was issued authorizing Georgetown and High Line Railway Company, LLC (GHL), to negotiate an interim trail use/rail banking agreement with CSXT under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.¹ By a series of decisions, the NITU negotiating period has been extended, most recently until October 24, 2021, by decision served on October 14, 2020. That decision noted that any further extension request would require a showing of “extraordinary circumstances” under the rule adopted in Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019).

On October 5, 2021, GHL requested that the Board further extend the NITU negotiating period for an additional year. CSXT responded on that same date that it consents to continue trail use negotiations.²

In BNSF Railway—Abandonment Exemption—in Cook County., Ill. (BNSF), AB 6 (Sub-No. 482X) et al. (STB served Apr. 16, 2021), the Board held that, “in light of the unprecedented effects of the [COVID-19] pandemic,” it would grant, upon request and with the

¹ The Board’s 2016 decision also imposed a consultation condition and a historic preservation condition under Section 106 of the National Historic Preservation Act.

² 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).

consent of the involved railroad, one additional one-year extension of an existing NITU without a showing of extraordinary circumstances in cases involving a NITU for which the very next extension after the effective date of BNSF would otherwise require such a showing. See id. at 4.

As noted above, GHJ's request fits that category and therefore qualifies for one additional one-year extension without a showing of extraordinary circumstances.³

Because the request is otherwise consistent with the new rule, as modified, and CSXT consents to the extension, the NITU negotiating period will be extended until October 24, 2022. However, any further extension request will require a showing of extraordinary circumstances. See id.

It is ordered:

1. GHJ's request to extend the NITU negotiating period is granted; the negotiating period is extended until October 24, 2022.
2. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

³ On October 5, 2021, the National Association of Reversionary Property Owners replied in opposition to the extension request on the ground that GHJ has failed to show "extraordinary circumstances" justifying the request. For the reasons discussed above, that objection is without merit.