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SERVICE DATE – FEBRUARY 17, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 775X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN CLARK, FLOYD,
LAWRENCE, ORANGE, & WASHINGTON COUNTIES, IND.

Decided: February 17, 2022

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exemption Abandonments to abandon an approximately 62.3-mile rail line on its Northern Region, Louisville Division, Hoosier Subdivision between milepost 00Q 251.7, near Bedford, and milepost 00Q 314.0, near New Albany, in Clark, Floyd, Lawrence, Orange, and Washington Counties, Ind. On January 8, 2018, notice of the exemption was served and published in the Federal Register (83 Fed. Reg. 936).

On February 28, 2018, the proceeding was reopened and a notice of interim trail use or abandonment (NITU) was issued authorizing the Indiana Trails Fund and the City of New Albany, Ind. (New Albany), 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. By a series of decisions, the NITU negotiating period has been extended, most recently until February 18, 2022. Under 49 C.F.R. § 1152.29(d)(1)(ii), any further extension request would require a showing of “extraordinary circumstances.” See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al., slip op. at 11 (STB served Dec. 4, 2019) (“[A] showing of extraordinary circumstances will be required for any request that would extend the interim trail use/railbanking negotiating period to a date after the four-year anniversary of the issuance of the CITU or NITU.”).

On January 21, 2022, New Albany requested that the Board further extend its NITU negotiating period for an additional year. New Albany acknowledges that, under ordinary circumstances, its extension request “might be restricted” under the rules promulgated in Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1), et al., but requests that the Board grant an additional one-year extension without a showing of extraordinary circumstances, in accordance with BNSF Railway—Abandonment Exemption—in Cook County., Ill., AB 6 (Sub-No. 482X) et al. (STB served Apr. 16, 2021). There, the Board held that, “in light of the unprecedented effects of the [COVID-19] pandemic,” it would grant, upon request and with the 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 that decision would otherwise require such a showing. See id. at 4.

On January 31, 2022, Indiana Trails Fund similarly requested that the Board extend its NITU negotiating period for an additional year. By replies filed on January 21, 2022, and February 16, 2022, CSXT states that it consents to continue trail use negotiations with New Albany and Indiana Trails Fund, respectively.¹

New Albany's and Indiana Trails Fund's requests qualify for one additional one-year extension without a showing of extraordinary circumstances, pursuant to BNSF Railway. Because the requests are otherwise consistent with the new rule, as modified, and CSXT consents to the extensions, the NITU negotiating period for both potential trail sponsors will be extended until February 18, 2023. However, any further extension request by either New Albany or Indiana Trail Fund will require a showing of extraordinary circumstances. See BNSF Ry., slip op. at 4.

It is ordered:

1. New Albany's and Indiana Trails Fund's requests to extend the NITU negotiating period are granted; the negotiating period for both potential trail sponsors is extended until February 18, 2023.

2. This decision is effective on its date of service.

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

¹ 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 Rts.-of-Way as Trails—Supplemental Trails Act Procs., 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).