

SERVICE DATE – JANUARY 7, 2025

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Digest:¹ The Board denies a motion filed by the National Association of Reversionary Property Owners seeking termination of a notice of interim trail use or abandonment issued to the City of St. Petersburg and CSX Transportation, Inc.

Decided: January 7, 2025

The Board will deny a motion filed by the National Association of Reversionary Property Owners (NARPO) seeking termination of a notice of interim trail use or abandonment (NITU) the Board issued to the City of St. Petersburg (City) and CSX Transportation, Inc. (CSXT). The Board will construe NARPO's motion as an appeal to the entire Board of an April 5, 2024, decision by the Acting Director of the Board's Office of Proceedings (Director), which denied an earlier, similar motion from NARPO.

BACKGROUND

On August 20, 2019, 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 in downtown St. Petersburg, Pinellas County, Fla. (the Line).² 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 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 NITU under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R.

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 Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² A more detailed history of this proceeding is contained in the Board's decisions served in this docket on June 22, 2020, CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla. (June 2020 Decision), AB 55 (Sub-No. 794X) (STB served June 22, 2020), and November 14, 2023, CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla. (November 2023 Decision), AB 55 (Sub-No. 794X) (STB served Nov. 14, 2023).

§ 1152.29. 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/railbanking with GHL but not with the City.

In a decision and NITU by the Director served January 13, 2020 (January 2020 Decision), GHL's request for a NITU was granted, authorizing GHL and CSXT to negotiate for interim trail use/railbanking until July 11, 2020. The January 2020 Decision also denied the City's request for a NITU because CSXT did not agree to negotiate with the City. January 2020 Decision, AB 55 (Sub-No. 794X), slip op. at 2.³

Following a one-year extension of GHL's NITU negotiating period,⁴ on June 23, 2021, CSXT and GHL jointly notified the Board that, as of June 17, 2021, they had entered into an interim trail use/railbanking agreement for the Line, pursuant to 49 C.F.R. § 1152.29(h).

Subsequently, for the reasons stated in the November 2023 Decision, the Board revoked the NITU issued to GHL and reinstated CSXT's authority to abandon the Line. See November 2023 Decision, AB 55 (Sub-No. 794X) (with Board Members Fuchs and Schultz dissenting). In that decision, the Board noted that CSXT filed a status report on June 15, 2023, stating that it was engaged in negotiations with the City concerning the Line. Id. at 6. The Board explained that the City could submit a renewed request for a NITU authorizing interim trail use/railbanking negotiations between it and CSXT. Id. at 8 n.9. The Board stated that if CSXT agreed to negotiate, and the Board granted the City's NITU request, the NITU would allow for continuation of the negotiations referenced in CSXT's June 15, 2023, status report. Id.

On December 14, 2023, the City filed a request for issuance of a NITU, to which CSXT replied on December 20, 2023, agreeing to negotiate with the City. By decision and NITU served January 12, 2024, the Board granted the City's request for a NITU. CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla. (NITU Decision), AB 55 (Sub-No. 794X), slip op. at 3-4 (STB served Jan. 12, 2024).

That same day, NARPO filed a motion requesting that the Board "terminate" the NITU issued to the City and CSXT. (NARPO Mot. 1, Jan. 12, 2024.) NARPO cited the rule adopted in Limiting Extensions of Trail Use Negotiating Periods (Limiting Extensions), EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019), which, among other things, provides that interim trail use/railbanking negotiations are generally limited to four years unless extraordinary circumstances are shown. (See NARPO Mot. 1, Jan. 12, 2024.) NARPO appeared to argue that the Board's issuance of the NITU to the City and CSXT contravened that rule because the City's new NITU extends the interim trail use/railbanking negotiation period beyond the four-year anniversary of the NITU issued to GHL and CSXT in January 2020. (See NARPO Mot. 1, Jan. 12, 2024.)

³ The City subsequently appealed to the Board the January 2020 Decision's grant of GHL's NITU. In the June 2020 Decision, the Board denied the City's appeal.

⁴ See CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla., AB 55 (Sub-No. 794X), slip op. at 5 (STB served Aug. 19, 2020).

By decision served April 5, 2024 (Director Order), NARPO's motion was denied. The Director Order explained that, in the November 2023 Decision revoking GHIL's NITU and reinstating CSXT's abandonment authority, the Board expressly provided that the City thereafter could seek a NITU. Director Order, AB 55 (Sub-No. 794X), slip op. at 2 (citing November 2023 Decision, AB 55 (Sub-No. 794X), slip op. at 8 n.9). The Director Order indicated that the City did so, CSXT consented, and a NITU was issued to the City and CSXT. Id. at 2. The Director Order also noted that GHIL and CSXT concluded their negotiations and notified the Board on June 23, 2021, that they reached an interim trail use/railbanking agreement; hence, the Line had not been under continuous interim trail use/railbanking negotiations under the Trails Act for four years, as NARPO suggested. Id.

On April 8, 2024, NARPO filed another motion, referencing the Director Order and again requesting that the Board "terminate" the NITU issued to the City and CSXT, which NARPO again notes was issued four years after the NITU issued to GHIL and CSXT. (NARPO Mot. 1, Apr. 8, 2024.) NARPO also notes GHIL's status as a CSXT subsidiary and other proceedings where NITUs were issued to GHIL and CSXT and states that if the Board "allows the kind of scheme that CSX[T] and GHIL are trying to pull off . . . then the four[-]year rule established in [Limiting Extensions] will end up as a farce." (Id.) NARPO appears to argue that if the Board allows the NITU between the City and CSXT to stand, other railroads and trail interest groups will follow suit to bypass the Board's interim trail use/railbanking regulations. (NARPO Mot. 1, Apr. 8, 2024.)

DISCUSSION AND CONCLUSIONS

Because it appears that NARPO's April 8, 2024, motion was filed in response to the Director Order, and NARPO repeats similar arguments that were rejected in the Director Order, and requests relief that is identical to the relief sought in its January 12, 2024 motion (i.e., that the Board "terminate" the NITU issued to the City and CSXT), the Board will construe the motion as an appeal of the Director Order to the entire Board. See 49 C.F.R. § 1011.2(a)(7). Here, the Director Order was issued pursuant to the Board's delegation to the Director of certain authority regarding the Trails Act. See id. Appeals of such decisions by the Director determining the applicability and administration of the Trails Act "will be acted on by the entire Board as set forth at 49 C.F.R. § 1011.2(a)(7)." 49 C.F.R. § 1152.25(e)(1). In considering an appeal, the Board considers whether the Director made the correct decision given the circumstances presented. See June 2020 Decision, AB 55 (Sub-No. 794X), slip op. at 3; Flats Indus. Inc.—Aban. Exemption—in Cleveland, Ohio, AB 1327X, slip op. at 3 (STB served July 19, 2023).

NARPO argues that under the regulations adopted in Limiting Extensions, the Director should not have granted the NITU to the City. Under those regulations, parties wishing to extend their negotiating period generally are now limited to three one-year extensions beyond the initial one-year term, absent a showing of "extraordinary circumstances." Limiting Extensions, EP 749 (Sub-No. 1), slip op. at 11; see also 49 C.F.R. § 1152.29(d)(1)(ii). In addition, the Board has stated that it will consider the negotiating periods for multiple NITUs or certificates of interim trail use or abandonment (CITUs) involving the same line cumulatively for purposes of determining whether the "extraordinary circumstances" standard applies. See CSX Transp.,

Inc.—Aban. Exemption—in Alachua Cnty., Fla., AB 55 (Sub-No. 718X), slip op. at 3 (STB served Apr. 16, 2020). Parties that requested a NITU or CITU before the new rules took effect also must show “extraordinary circumstances” for any request that would extend the negotiating period to a date after the four-year anniversary of the issuance of the NITU or CITU. Limiting Extensions, EP 749 (Sub-No. 1), slip op. at 11.

Here, given the facts presented, the Board finds that the Director Order was correct. As that decision stated, in revoking GHF’s NITU and reinstating CSXT’s abandonment authority, the Board expressly provided that the City could submit a renewed request for a NITU. See November 2023 Decision, AB 55 (Sub-No. 794X), slip op. at 8 n.9. The City did so, CSXT agreed to negotiate with the City, and the Board issued a new NITU. Therefore, the Director Order correctly denied NARPO’s motion in light of the Board decisions specifically finding that the City could request a NITU and then issuing that NITU to the City and CSXT. See id.; NITU Decision, AB 55 (Sub-No. 794X), slip op. at 3-4. Further, as the Director Order observed, GHF and CSXT concluded their negotiations and notified the Board on June 23, 2021, that they reached an interim trail use/railbanking agreement; hence, the Line had not been under continuous interim trail use/railbanking negotiations under the Trails Act, as NARPO suggested. See Director Order, AB 55 (Sub-No. 794X), slip op. at 2.

Given these facts, the regulations adopted in Limiting Extensions do not impede the Board’s issuance of a NITU to the City. Accordingly, in resolving NARPO’s motion, the Board need not decide whether the City was required to demonstrate extraordinary circumstances under Limiting Extensions when requesting the NITU. But as discussed above, the facts of this case are unique and certainly not routine, and there was ample justification for the NITU Decision.

Finally, the Board need not address NARPO’s arguments related to GHF’s status as a CSXT subsidiary. The Board has already discussed, at length, the affiliation between GHF and CSXT in earlier decisions in this proceeding, see November 2023 Decision, AB 55 (Sub-No. 794X), slip op. at 8; June 2020 Decision, AB 55 (Sub-No. 794X), slip op. at 5-8, and, in any event, GHF is not a party to the present negotiations between the City and CSXT.

For the reasons discussed above, the relief requested by NARPO in its April 8, 2024 motion is denied.

It is ordered:

1. NARPO’s April 8, 2024 motion, which the Board construes as an appeal of the Director Order, is denied, as discussed above.

2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.