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CITY OF ATHENS

Austin Fesmire, CPRP
Director
Parks and Recreation Department

July 10, 2015

238806

Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
July 13, 2015
Part of
Public Record

**Re: CSX Transportation Abandonment of the Athens Branch in McMinn County, Tennessee,
(STB Docket No. AB-55/Sub No. 694X)**

Dear Secretary:

I am writing on behalf of McMinn County, Tennessee to request another 180 day extension of the deadline for negotiations with CSX Transportation, Inc. ("CSXT"), regarding the Notice of Interim Trail Use in the above captioned proceeding with respect to the 6.4 mile portion of the line ("the Athens Branch") that extends northwest from near Englewood to Athens. (between OKW327.0 and OKW333.4 including both spurs located after OKW 332). Pursuant to the attached February 13, 2015 decision ("the Decision") of the Surface Transportation Board ("the Board"), an agreement for interim trail use/rail banking expires August 12, 2015 ("Negotiating Deadline").

As previously reported, McMinn County has completed the purchase of OKW332.61 to OKW328.47 and would request that the extension be relative to the remainder of the above mentioned line which is from OKW328.47 to OKW327.0. We are in the process of requesting further funding through the federal RTP program and private donors so that we might complete this purchase however we need additional time to pursue this funding opportunity. Additionally since our last request CSX has made personnel changes and we agreed to delay discussions until they completed those changes and notified us of the same.

The County respectfully requests an extension to February 8, 2016 (180 calendar days for the Negotiating Deadline). In addition, the County respectfully requests a waiver of the Boards filing fees in accordance with 49 CFR 1002.2(e)(1).

Respectfully submitted,

Austin Fesmire
City of Athens

cc: Kevin Hurley, CSX
Matthew Coffing, CSX
John Gentry, McMinn County Mayor
Mitchell Moore, Athens City Manager

Attachment: February 13 Decision

FILING FEE WAIVED

SERVICE DATE – FEBRUARY 13, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 694X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN MCMINN COUNTY, TENN.

Decided: February 12, 2015

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 6.4-mile rail line, known as the Athens Branch, on its Southern Region, Huntington-West Division, KD Subdivision, between milepost OKW 327.0, at Englewood, and milepost OKW 333.4, at Athens, in McMinn County, Tenn. Notice of the exemption was served and published in the Federal Register on May 21, 2009 (74 Fed. Reg. 23,926).

By decision and notice of interim trail use or abandonment (NITU) served on August 13, 2009 (August 2009 decision), the proceeding was reopened and a 180-day period was authorized for McMinn County (the County), the City of Athens, and the City of Englewood to negotiate with CSXT for an interim trail use/rail banking agreement for the 6.4-mile line under § 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.¹ By a series of decisions, with the latest decision served on August 19, 2013, the NITU negotiating period was extended until February 18, 2014.

In a letter filed on March 12, 2014, the County notified the Board that it had completed trail use negotiations for the purchase of a portion of the line between milepost OKW 328.47 and milepost OKW 333.4, and requested another 180-day extension to negotiate an interim trail use/rail banking agreement for the remaining portion of the line between milepost OKW 327.0 and milepost OKW 328.47. By several decisions, with the latest decision served on August 25, 2014, the NITU negotiation period was extended until February 13, 2015.

In a letter filed on December 22, 2014, CSXT notified the Board that it has terminated trail use negotiations with the County for a 0.79-mile portion of the line previously subject to negotiations between milepost OKW 332.61 and milepost OKW 333.4. CSXT requests that the Board vacate the NITU for the 0.79-mile portion and issue a revised NITU for the remaining portion of the line between milepost OKW 327.0 and milepost OKW 332.61. CSXT states upon

¹ The August 2009 decision also imposed two salvage-related conditions that remain in effect.

receipt of the revised NITU, CSXT will consummate the abandonment of the 0.79-mile line.² In the letter, CSXT also states that it has entered into an agreement with the County for an interim trail use/rail banking agreement for the portion of the line between milepost OKW 328.4 and milepost OKW 332.61. CSXT states that an appropriate notice regarding that agreement will be submitted to the Board in the near future.

On December 29, 2014, the County submitted a request to further extend the NITU negotiation period for 180 days, from February 13, 2015, until August 12, 2015, for the portion of the line between milepost OKW 327.0 and milepost 328.47. In a letter filed on December 29, 2014, CSXT states that it agrees to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for a portion of the line and is willing to continue trail use negotiations for that portion of the line, the Board retains jurisdiction, and the NITU negotiating period may be extended.³ Under the circumstances, further extension of the negotiating period is warranted. See 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). An extension of the NITU negotiation period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period for the portion of the line between milepost OKW 327.0 and milepost OKW 328.47 will be extended for an additional 180 days from February 13, 2015, until August 12, 2015. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). The NITU for the portion of the line between milepost 332.61 and milepost 333.4 is vacated.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on August 13, 2009, is modified, and the NITU for the portion of the line between milepost 332.61 and milepost 333.4 is vacated.
3. The County's request to extend the NITU negotiating period for the NITU as modified for an additional 180 days is granted.

² The two salvage-related conditions imposed in the August 2009 decision are not barriers to CSXT's consummation of this portion of the line.

³ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

4. The NITU negotiating period is extended from February 13, 2015, to August 12, 2015, for the portion of the line from milepost OKW 328.47 to milepost OKW 327.0.

5. If an interim trail use/rail banking agreement is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

6. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.