

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1073X

ALABAMA & FLORIDA RAILWAY CO., INC.—ABANDONMENT EXEMPTION—
IN GENEVA, COFFEE AND COVINGTON COUNTIES, ALA.

Decided: April 18, 2019

On July 20, 2011, Alabama & Florida Railway Co., Inc. (A&F) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon 42.9 miles of rail line approximately between milepost 581.3 at Andalusia, Ala., and milepost 624.2 at Geneva, Ala. (the Line). Notice of the exemption was served and published in the Federal Register on August 9, 2011 (76 Fed. Reg. 48,941). The exemption became effective on September 8, 2011.

By decision served on April 24, 2012, the Board reopened this proceeding and issued a notice of interim trail use or abandonment (NITU) to allow the Alabama Trails Commission (ATC) to negotiate with A&F and CSX Transportation, Inc. (CSXT)¹ for an interim trail use/rail banking agreement for the right-of-way pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.

Since then, the NITU negotiating period has been extended several times, most recently to October 14, 2018. On October 30, 2018, ATC requested an additional 180-day extension. On November 1, 2018, the National Association of Reversionary Property Owners (NARPO) filed a

¹ In its verified notice of exemption, A&F stated that it does not own title to the real property comprising the Line's right-of-way but that the title remains with CSXT. According to A&F, when the Line was sold in 1986 to an unaffiliated short line railroad predecessor of A&F (Alabama & Florida Railroad, Inc.), CSXT's predecessor (Seaboard System Railroad, Inc.) conveyed to A&F's predecessor the common carrier obligation associated with the Line but retained for itself an ownership interest in the underlying real estate and remained as a lessor of the Line's right-of-way. A&F stated that it acquired the Line from Alabama & Florida Railroad, Inc., subject to this arrangement with CSXT. As a result, consent has been required from both A&F and CSXT for NITU extensions, and indeed, the Board denied a prior extension request to which A&F objected. See Ala. & Fla. Ry.—Aban. Exemption—in Geneva, Coffee, & Covington Cts., Ala., AB 1073X (STB served Nov. 18, 2013).

letter opposing ATC's request and questioning whether rail service on the Line could ever be restored. On December 10, 2018, CSXT filed a letter reaffirming its consent to continue negotiations for an additional 180-day period. A&F did not file its agreement to ATC's requested extension until March 1, 2019.²

The most recent NITU negotiating period expired on October 14, 2018, without a trail use agreement being reached. ATC filed a NITU extension request on October 30, and A&F did not consent until four months later, well after A&F's 60-day deadline for filing a notice of consummation of abandonment for the Line. See 49 C.F.R. § 1152.29(e)(2). Although requests for NITU extensions have been granted in prior cases where the railroad consented to the NITU extension after the abandonment consummation deadline had already passed, recently the Board has made clear that "abandonment authority expires" where a railroad fails to file a timely notice of consummation of abandonment, provided the Board has not otherwise waived the consummation deadline set forth in 49 C.F.R. § 1152.29(e)(2). See CSX Transp., Inc.—Aban. Exemption—in Butler Cty., Ohio, AB 55 (Sub-No. 734X) (STB Served Apr. 3, 2019); BNSF Ry. Co.—Aban. Exemption—in Fulton Cty., Ill., AB 6 (Sub-No. 486X) (STB Served April 17, 2019); see also 49 C.F.R. § 1152.29(e)(2) (requiring that railroads file requests to extend the date for filing a notice of consummation of abandonment "sufficiently in advance of the expiration of the deadline").

Accordingly, because there were no other legal or regulatory barriers to consummating the abandonment after the expiration of the NITU negotiating period on October 14, 2018, the authority to abandon therefore expired on December 13, 2018, and the Line remains an active line of rail subject to the Board's jurisdiction. See 49 C.F.R. § 1152.29(e)(2). Because the abandonment authority has expired, ATC's requests for extensions of the NITU negotiating period will be denied as moot. Likewise, NARPO's request to vacate the NITU will be denied as moot.

It is ordered:

1. ATC's requests for 180-day extensions of the negotiating period under the NITU are denied as moot.
2. NARPO's request to vacate the NITU is denied as moot.

² On April 12, 2019, ATC requested an additional 180-day extension, to which CSXT and A&F jointly responded on April 17, 2019.

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

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