

34986
DO

SERVICE DATE - AUGUST 11, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-254 (Sub-No. 7X)

PROVIDENCE AND WORCESTER RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN WORCESTER COUNTY, MA, AND WINDHAM COUNTY, CT

Decided: August 10, 2004

Providence and Worcester Railroad Company (P&W) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a portion of its line of railroad known as the Southbridge Running Track, extending from milepost 0.18, in Webster, MA, to milepost 10.98, in Southbridge, MA, a distance of approximately 10.8 miles, in Worcester County, MA, and Windham County, CT. Notice of the exemption was served and published in the Federal Register on November 4, 2003 (68 FR 62497-98). By decision and notice of interim trail use or abandonment (NITU) served on December 3, 2003, the proceeding was reopened and a 180-day period authorized the Commonwealth of Massachusetts, by and through its Executive Office of Transportation and Construction (EOTC), to negotiate an interim trail use/rail banking agreement with P&W for the portion of the right-of-way between milepost 0.18, in Webster, and milepost 1.4 +/-, in Dudley, and between milepost 4.8 +/-, in Dudley, and milepost 10.98, in Southbridge, MA, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).

The negotiating period was extended by decisions served on June 1, 2004, and August 4, 2004. The latest extension was scheduled to expire on August 9, 2004. By facsimile received on August 6, 2004, P&W and EOTC jointly request an extension of the negotiating period until August 17, 2004. P&W and EOTC state that the parties were unable to complete negotiations by August 9, 2004, and that an extension of time is necessary to finalize those negotiations.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by joining in the request for an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. 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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended until August 17, 2004, for the portion of the line described above.

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

It is ordered:

1. The request to extend the NITU negotiating period until August 17, 2004, for the portion of the line described above, is granted.
2. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary