

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 699X)

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

Decided: May 31, 2011

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 0.22-mile line of railroad on CSXT's Southern Region, Huntington-West Division, KD Subdivision, extending from milepost OKW 333.40 to milepost OKW 333.62, in Athens, McMinn County, Tenn. Notice of the exemption was served and published in the Federal Register on October 9, 2009 (74 Fed. Reg. 52,294).<sup>1</sup> By decision and notice of interim trail use or abandonment (NITU) served on November 25, 2009, the proceeding was reopened and a 180-day period was authorized for the City of Athens (City) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. By decisions served on May 21, 2010, and December 7, 2010, the NITU negotiating period was extended until May 4, 2011.

On May 10, 2011, the City submitted a request to extend the NITU negotiating period until November 5, 2011. In a response filed on May 11, 2011, CSXT states that it is willing to continue trail use negotiations with the City, but only for an additional 180 days, until October 31, 2011.<sup>2</sup>

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended.<sup>3</sup> 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 negotiating period will promote the establishment of trail use

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<sup>1</sup> The exemption became effective on November 10, 2009.

<sup>2</sup> CSXT notes that, under 49 C.F.R. § 1152.29(e)(2), the requested extension of the NITU negotiating period creates a regulatory barrier to consummation of the abandonment. For that reason, if the NITU negotiating period expires without the parties having reached an agreement, CSXT's notice of consummation will be due not later than 60 days thereafter. See 49 C.F.R. § 1152.29(e)(2).

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

and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for an additional 180 days from May 4, 2011 (until October 31, 2011).<sup>4</sup>

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

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until October 31, 2011.
3. This decision and notice is effective on its service date.

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

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<sup>4</sup> Trail use/rail banking is voluntary and can be implemented only if an abandoning railroad agrees to negotiate an agreement. See section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d). Therefore, the negotiating period may be extended only for the agreed term of 180 days.