

SERVICE DATE – APRIL 1, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 734X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN BUTLER  
COUNTY, OHIO

Digest:<sup>1</sup> This decision waives a regulatory provision that would result in the expiration of CSX Transportation, Inc.'s authority to abandon approximately 2.96 miles of rail line in Butler County, Ohio, and grants the City of Hamilton's request to extend the deadline to negotiate interim trail use/rail banking for the line.

Decided: March 29, 2019

On April 4, 2014, CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 2.96 miles of rail line on its Northern Region, Louisville Division, Indianapolis Subdivision, between milepost BDA 0.0 and the end of the track at approximately milepost BDA 2.96 in Hamilton, Butler County, Ohio. Notice of the exemption was served and published in the Federal Register on April 24, 2014 (79 Fed. Reg. 22,840). The exemption became effective on May 24, 2014.

On May 8, 2014, the City of Hamilton, Ohio (the City), filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. On May 9, 2014, CSXT agreed to negotiate with the City for possible interim trails use. On May 23, 2014, the Board reopened the proceeding, issued a NITU, and gave the parties until November 19, 2014, to negotiate for interim trail use/rail banking. That deadline was extended a number of times and expired on October 29, 2018.

On October 25, 2018, the City filed a request to extend the deadline to negotiate interim trail use/rail banking with CSXT for 180 days to April 26, 2019. CSXT responded on October 26, 2014, indicating that it agrees to the requested extension. The Board will grant this request.

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<sup>1</sup> 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 Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Under 49 C.F.R. § 1152.29(e)(2), if a notice of consummation of abandonment is not filed within 60 days of the expiration or removal of the last legal or regulatory barrier to consummation (here, the NITU), the abandonment authority expires. Section 1152.29(e)(2) also provides that a railroad may file a request for an extension of time to file a notice so long as it does so sufficiently in advance of the expiration of the deadline to allow for timely processing. CSXT did not file an extension request or a notice of consummation by December 28, 2018 (60 days after the expiration of the NITU). Accordingly, CSXT's authority to abandon would have expired on that day.

As a result of administrative oversight, the Board did not respond in a timely manner to the request to extend the trail use/rail banking negotiating period. The City filed a request to extend the trails use/rail banking negotiating period prior to its expiration, and CSXT filed a timely response. That the City's request was not granted prior to December 28, 2018, is not the fault of the parties. Under the circumstances, the Board will waive the 60-day provision at 49 C.F.R. § 1152.29(e)(2) to the extent it would have resulted in the expiration of CSXT's abandonment authority on December 28, 2018, and will grant the City's extension request.<sup>2</sup> The 60-day provision will again apply with respect to any future expiration or removal of all legal or regulatory barriers to consummation. If an interim trail use 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).

It is ordered:

1. The provision at 49 C.F.R. § 1152.29(e)(2) setting a 60-day deadline for filing a notice of consummation upon the expiration of any legal or regulatory barriers is waived in this instance.
2. The City's request for an extension of the trails use/rail banking negotiating period is granted. If an interim trail use agreement is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).
3. The trails use/rail banking negotiating period is extended to April 26, 2019.
4. This decision is effective on the date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.

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<sup>2</sup> See GTE Serv. Corp. v. FCC, 782 F.2d 263, 273-74 & n.12 (D.C. Cir. 1986).