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SERVICE DATE – AUGUST 26, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 681X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN ORANGE
COUNTY, FL

Decided: August 24, 2009

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 0.69-mile line of railroad on its Southern Region, Jacksonville Division, Sanford Subdivision, extending between railroad milepost ST 815.88 and railroad milepost ST 816.57, known as the “Mills & Nebraska Lead,” in Orlando, Orange County, FL. Notice of the exemption was served and published in the Federal Register (72 FR 41387-88) on July 27, 2007. The exemption became effective on August 28, 2007.

By decision and notice of interim trail use (NITU), served on August 27, 2007 (August 2007 decision), the proceeding was reopened and a 180-day period was authorized for the City of Orlando (City) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way in this proceeding.¹ The negotiating period under the NITU was extended by decisions served on March 25, 2008, September 2, 2008, and March 19, 2009 (March 2009 decision).² The latest extension expired on August 17, 2009.

On August 11, 2009, the City filed a request to extend the NITU negotiating period for an additional 180 days. The City states that it has been unable to finalize negotiations with CSXT and that more time is needed to conclude negotiations. By letter filed on August 12, 2009, CSXT states that it concurs with the extension request. In addition, CSXT requests an extension of the consummation notice filing deadline until April 14, 2010.³

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 agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may

¹ The August 2007 decision also imposed a 180-day public use condition, which expired on February 24, 2008, and by statute may not be extended.

² The March 2009 decision also granted a request by CSXT to extend the time to consummate the abandonment until October 16, 2009.

³ Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

be extended.⁴ Under the circumstances, 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). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Also, an extension of time to consummate the abandonment and to file a notice of consummation in this proceeding is justified. Accordingly, the NITU negotiating period will be extended for an additional 180 days, from August 17, 2009, to February 13, 2010, and the consummation notice filing deadline will be extended until April 14, 2010.

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 and CSXT's request to extend the time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended for an additional 180 days, until February 13, 2010.
3. The authority to abandon must be exercised on or before April 14, 2010.
4. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary

⁴ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).