

SERVICE DATE – SEPTEMBER 27, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 694X)

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

Decided: September 26, 2011

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 6.4-mile rail line, known as the Athens Branch, on its Southern Region, Huntington-West Division, KD Subdivision between milepost OKW 327, at Englewood, and milepost OKW 333.4, at Athens, in McMinn County, Tenn. Notice of the filing was served and published in the Federal Register on May 21, 2009 (74 Fed. Reg. 23,926-27). By decision and notice of interim trail use or abandonment (NITU) served on August 13, 2009 (August 2009 decision), the proceeding was reopened and a 180-day period was authorized for McMinn County (the County), the City of Athens, and the City of Englewood to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding.¹ By a decision served on March 17, 2011, the Board granted the County's request for an extension of the negotiating period until September 2, 2011.

On August 31, 2011, the County filed a request for a further extension of the negotiating period. The County states that it has completed a feasibility study and will be able to enter negotiations with CSXT. By letter filed on September 7, 2011, CSXT concurs with an extension of the negotiating period for 180 days, until February 29, 2012.²

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 2009 decision also made the exemption subject to salvage conditions and a public use condition. The public use condition, which is limited by statute to 180 days, expired on March 11, 2010, and may not be extended.

² 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).

be extended.³ 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). Accordingly, the NITU negotiating period will be extended to February 29, 2012.

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

It is ordered:

1. The County's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until February 29, 2012.
3. This decision is effective on its service date.

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

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