

SERVICE DATE – JULY 23, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 684X)

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

Decided: July 22, 2010

On October 26, 2007, a decision and notice of interim trail use or abandonment (NITU) was served in this proceeding authorizing an 180-day period for the Memphis Community Connector (MCC) to negotiate an interim trail use/rail banking agreement with CSX Transportation, Inc. (CSXT), for a 13.34-mile rail line on CSXT's Southern Region, Nashville Division, Memphis Terminal Subdivision, between milepost ONI 210.66 near Cordova and milepost ONI 224 in Memphis, known as the Cordova Branch, in Shelby County, Tenn.¹ By a decision served on April 30, 2008, the NITU was modified to include Shelby County, Tenn. (Shelby County), as an additional party to MCC's trail use negotiations under the NITU. Subsequently, MCC, Shelby County, and CSXT (the parties) requested separate NITU negotiating periods for 2 segments of the line, the segment located between MP ONI 224 and MP ONI 216.92 (Memphis Segment) and the segment located between MP ONI 210.66 and MP ONI 216.92 (Cordova Segment). By decision served on August 21, 2008, separate NITU negotiating periods were imposed for these segments. By letter filed on November 30, 2009, CSXT informed the Board that the parties had entered into an agreement for transfer of the Memphis Segment and closed that transaction. The NITU negotiating period for the Cordova Segment has been extended several times, with the latest extension, until June 30, 2010, granted by decision served on June 16, 2009.

By letter filed on June 30, 2010, MCC and Shelby County request an extension of the negotiating period for the Cordova Segment until June 30, 2011. MCC and Shelby County indicate that they are conducting ongoing negotiations with CSXT for the sale and purchase of the Cordova Segment. In a letter filed on July 13, 2010, CSXT states that it has not consummated the abandonment, desires to continue to negotiate for interim trail use/rail banking with MCC and Shelby County, and concurs in the extension request.

¹ Two environmental conditions were imposed in that decision, 1 of which remains, but is not an impediment to consummation.

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.² Accordingly, the NITU negotiating period will be extended until June 30, 2011.³ Given the time that has elapsed since abandonment was granted, the parties are urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. MCC's and Shelby County's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU for the Cordova Segment is extended until June 30, 2011.
3. This decision is effective on its service date.

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

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

³ An extension until June 30, 2011, provides a negotiating period that is longer than 180 days, but the parties concluded the purchase and sale of the Memphis Segment and wish to continue negotiations for the Cordova Segment. Under the circumstances here, the longer extension is appropriate. The 180-day period is not statutory. It was adopted in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 605 (1986), to promote the expeditious conclusion of negotiations.