

SERVICE DATE - APRIL 30, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 592X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN CLARK
COUNTY, IN

Decided: April 25, 2002

On October 9, 2001, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for CSX Transportation, Inc. (CSXT), to negotiate an interim trail use/rail banking agreement with the City of Jeffersonville (City), for a 5.4-mile segment of its Midwest Region railroad line, known as the Louisville Division, Louisville Terminal/Hoosier Subdivision, extending between milepost B-1.3, near Watson, and milepost B-6.7, near Jeffersonville, in Clark County, IN. The negotiating period under the NITU was scheduled to expire on April 7, 2002. In a letter to the Board filed on March 26, 2002, CSXT requested an extension of the negotiating period until September 30, 2002, in order to complete trail negotiations with the City.

In a decision served on April 5, 2002, the extension request was granted for the line segment between milepost B-1.3 and milepost B-4.96, and was denied for the remainder of the line. The decision noted that the Board lacked jurisdiction over the line segment between milepost B-4.96 and milepost B-5.52 based on CSXT's prior notification that the abandonment of that segment had been consummated.¹ As to the contiguous line segment between mileposts B-5.52 and B-6.7, the decision stated that the segment appeared to have been severed from the national rail system, and thus no longer qualified for a NITU.² The decision noted, however, that either CSXT or the City could submit additional evidence to establish that the segment was in fact eligible for a NITU. In the event that either was able to establish that the segment was eligible for a NITU, a subsequent decision would be issued granting the requested extension for this line segment.

¹ See the letter filed on December 31, 2001, in which CSXT notified the Board that it had consummated the abandonment of the line segment between milepost B-4.96 and milepost B-5.52 on December 28, 2001. Consummation of an abandonment of a line segment removes the segment from the Board's jurisdiction and trail use procedures. As a result, the request for an extension of the NITU negotiating period for that segment could not be granted.

² The predicate for interim trail use of rail lines is that the right-of-way be available—rail banked—for future active rail use. Such future use cannot be assured if the connections between the rail banked lines and the national rail system are withdrawn from the Board's jurisdiction.

By letter filed on April 15, 2002, the City informed the Board that, although the segment in question had been severed from CSXT's rail system, it remains connected to the national rail system via the Louisville & Indiana Railroad Company's active right-of-way at approximately milepost B-6.1 and milepost B-6.45. The City states that, due to this connection, the segment between mileposts B-5.52 and B-6.7, which remains under Board jurisdiction, also still qualifies for a NITU. Based on this new information, it appears that the segment between mileposts B-5.52 and B-6.7 is eligible for a NITU. Accordingly, the extension sought by CSXT for the segment may be granted.

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,³ the Board retains jurisdiction and the NITU negotiating period may be extended.⁴ 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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period for the segment between milepost B-5.52 and milepost B-6.7 will be extended for the amount of time previously granted in the April 5, 2002 decision for the segment between mileposts B-1.3 and B-4.96, or until September 30, 2002.

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

It is ordered:

1. This proceeding is reopened.
2. The City's request to extend the NITU negotiating period is granted for the line segment between mileposts B-5.52 and B-6.7.
3. The negotiating period under the NITU is extended until September 30, 2002.

³ CSXT's March 26, 2002 request for an extension of the NITU negotiating period did not describe line segments for which the request was being made, instead requesting the extension for "the above-captioned matter." The April 5, 2002 decision treated the request as covering the entire line, from milepost B-1.3 to milepost B-6.7. For the purposes of this decision, CSXT's extension request from March 26, 2002, is understood to be an implicit statement of willingness to continue negotiations for the line segment between mileposts B-5.52 and B-6.7.

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

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary