

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: September 21, 2007

By decision and notice of interim trail use or abandonment (NITU) served on October 9, 2001, a 180-day period was authorized for CSX Transportation, Inc. (CSXT), to negotiate an interim trail use/rail banking agreement with the City of Jeffersonville, IN (the 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.

In a decision served on April 5, 2002, the negotiating period was extended only for the line segment between milepost B-1.3 and milepost B-4.96. Subsequently, by decision served on April 30, 2002, the negotiating period was extended for the line segment between milepost B-5.52 and milepost B-6.7. The negotiating period under the NITU for both line segments was extended several times. The latest extension, which was granted by decision served on February 15, 2007 (February 2007 decision), extended the NITU negotiating period until July 24, 2007. The February 2007 decision also extended the deadline for CSXT to file its notice of consummation until September 22, 2007.

By letter filed on August 28, 2007, CSXT requests a 180-day extension of the NITU negotiating period, until January 20, 2008. CSXT states that it has not consummated the abandonment and desires to continue to negotiate interim trail use with the City. Additionally, CSXT requests an extension of the consummation notice filing deadline until March 20, 2008.¹

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 requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.² 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.

¹ 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.

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

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). An extension of the time to consummate the abandonment and for filing a notice of consummation in this proceeding also is justified. Accordingly, the NITU negotiating period will be extended for a period of 180 days, from July 24, 2007, to January 20, 2008, and the consummation notice filing deadline will be extended to March 20, 2008. Given the time that has elapsed since abandonment was authorized, 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. CSXT's request to extend the NITU negotiating period and to extend the time to exercise the abandonment authority is granted.
2. The negotiating period under the NITU is extended to January 20, 2008.
3. The authority to abandon must be exercised on or before March 20, 2008.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary