

SERVICE DATE – OCTOBER 12, 2022

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 775X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN CLARK, FLOYD,
LAWRENCE, ORANGE, & WASHINGTON COUNTIES, IND.

Decided: October 12, 2022

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 62.3-mile rail line on its Northern Region, Louisville Division, Hoosier Subdivision between milepost 00Q 251.7, near Bedford, and milepost 00Q 314.0, near New Albany, in Clark, Floyd, Lawrence, Orange, and Washington Counties, Ind. On January 8, 2018, notice of the exemption was served and published in the Federal Register (83 Fed. Reg. 936).

On February 28, 2018, the proceeding was reopened and a notice of interim trail use or abandonment (NITU) was issued authorizing the Indiana Trails Fund and the City of New Albany, Ind. (New Albany), to negotiate an interim trail use/rail banking agreement with CSXT under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.

By a series of decisions, the NITU negotiating period has been extended, most recently until February 18, 2023. CSX Transp., Inc.—Aban. Exemption—in Clark, Floyd, Lawrence, Orange, & Wash. Cntys., Ill. (2022 Extension Decision), AB 55 (Sub-No. 775X) (STB served Feb. 17, 2022). The 2022 Extension Decision explained that under 49 C.F.R. § 1152.29(d)(1)(ii), the extension granted therein would typically require a showing of “extraordinary circumstances.” See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al., slip op. at 11 (STB served Dec. 4, 2019) (“[A] showing of extraordinary circumstances will be required for any request that would extend the interim trail use/railbanking negotiating period to a date after the four-year anniversary of the issuance of the CITU or NITU.”) However, an additional one-year extension without a showing of extraordinary circumstances was granted in accordance with BNSF Railway—Abandonment Exemption—in Cook County., Ill., AB 6 (Sub-No. 482X) et al. (STB served Apr. 16, 2021). There, the Board held that, “in light of the unprecedented effects of the [COVID-19] pandemic,” it would grant, upon request and with the consent of the involved railroad, one additional one-year extension of an existing NITU without a showing of extraordinary circumstances in cases involving a NITU for which the very next extension after the effective date of that decision would otherwise require such a showing. See id. at 4. The 2022 Extension Decision further noted that any additional extension beyond February 18, 2023, would require a showing of extraordinary circumstances. 2022 Extension Decision, slip op. at 2.

On August 26, 2022, New Albany and Radius Indiana (Radius) jointly requested that the Board reopen the proceeding, vacate the NITU with regard to New Albany, and reissue separate NITUs to Radius and New Albany for interconnecting segments of the Line. Under their proposal, New Albany would negotiate with CSXT for interim trail use for the portion of the Line between milepost 00Q 309.5 and milepost 00Q 314.0, a distance of approximately 4.5 miles in Floyd County (the South Segment), and Radius would negotiate with CSXT for interim trail use for the portion of the Line between milepost 00Q 309.5 and milepost 00Q 251.7, a distance of approximately 57.8 miles in Clark, Lawrence, Orange, and Washington Counties (the North Segment). Pursuant to § 1152.29, with their request, New Albany and Radius each submitted a statement of its willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a letter filed on August 30, 2022, CSXT indicated its willingness to negotiate with New Albany and Radius for interim trail use on the South Segment and the North Segment, respectively.

The interim trail use program is voluntary and consensual between the railroad and the trail sponsor. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Because the request from New Albany and Radius complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for interim trail use, a NITU applicable to New Albany will be issued for the South Segment, and a NITU applicable to Radius will be issued for the North Segment. The parties may negotiate an agreement for the right-of-way during the period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached during the prescribed period, CSXT may fully abandon the Line, subject to any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

As to the duration of these new NITUs, as noted above, the Board previously extended the negotiating period for the original NITU to February 18, 2023, the maximum extent permitted without a showing of extraordinary circumstances. See 2022 Extension Decision; BNSF Ry., slip op. at 4. Moreover, for purposes of determining whether extraordinary circumstances must be shown, the time periods of successive NITUs are tacked together and considered cumulatively. See CSX Transp., Inc.—Aban. Exemption—in Alachua Cnty., Fla., AB 55 (718X), slip op. at 3 (STB served Apr. 16, 2020). The parties have not shown extraordinary circumstances to further extend the negotiating period, and therefore, the negotiating period for the NITUs issued here will expire on February 18, 2023.¹ Any further extension request by either New Albany or Radius will require a showing of extraordinary circumstances. See BNSF Ry., slip op. at 4.

Accordingly, this proceeding will be reopened and a replacement NITU will be issued to New Albany for the South Segment and to Radius for the North Segment.

¹ The NITU issued to the Indiana Trails Fund is unaffected by this decision.

It is ordered:

1. This proceeding is reopened.
2. The NITU issued to New Albany and served on February 17, 2022, is vacated.
3. A replacement NITU applicable to New Albany for the South Segment and Radius for the North Segment as interim trail sponsors is issued, effective on the service date of this decision and notice, to permit New Albany and Radius to negotiate with CSXT for trail use for their respective portions of the Line, until February 18, 2023.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsors to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the trail sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsors' continuing to meet their responsibilities for the right-of-way described in paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. §§ 1152.29(d)(2) and (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
8. If an agreement for interim trail use/rail banking is reached by February 18, 2023, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line, subject to any outstanding conditions.
9. This decision and notice is effective on its date of service.

By the Board, Mai T. Dinh, Director, Office of Proceedings.