

SERVICE DATE – MAY 6, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 741X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN RALEIGH COUNTY, W. VA.

Decided: May 5, 2020

In 2015, CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a 15.12-mile line of railroad on its Southern Region, Huntington East Division, Big Marsh Fork Subdivision, that extends between mileposts CLP 0.0 and CLP 15.12 near Whitesville, in Raleigh County, W. Va. Notice of the exemption was served and published in the Federal Register on April 2, 2015 (80 Fed. Reg. 17,822). On May 1, 2015, the proceeding was reopened and a notice of interim trail use or abandonment (NITU) was issued authorizing a 180-day period for the New River Gorge Regional Development Authority (NRGRDA) 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 issued from November 3, 2015, to April 30, 2019, the NITU negotiating period has been extended a number of times, most recently until April 22, 2020.

On April 21, 2020, NRGRDA filed a request for a one-year extension of the NITU negotiating period, to which CSXT consented by letter filed that same day.¹ Because the NITU was issued in 2015, it qualifies, under the Board's new rule governing NITUs, for the transitional one-year extension without 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) (adopting final rule regarding the number and duration of, and standard for granting, extensions of a NITU negotiating period). Because the request is otherwise consistent with the new rule, and CSXT consents to the extension, the request for an extension of the NITU negotiating period until April 22, 2021, will be granted. However, under the new rule, any further extension request will require a showing of extraordinary circumstances. See id.

¹ Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); see also 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).

It is ordered:

1. The City's request for an extension of the NITU negotiating period is granted; the NITU negotiating period is extended until April 22, 2021.
2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.