

SERVICE DATE – AUGUST 6, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 449 (Sub-No. 3X)

WESTERN KENTUCKY RAILWAY, LLC – ABANDONMENT EXEMPTION – IN
WEBSTER, UNION, CALDWELL AND CRITTENDEN COUNTIES, KY.

Decided: August 3, 2012

Western Kentucky Railway, LLC (WKRL) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon all five of its remaining lines of railroad in Webster and Union Counties, Ky.¹ Notice of the exemption was served and published in the Federal Register on January 20, 2011 (76 Fed. Reg. 3,696). The exemption became effective on February 26, 2011. By decision and notice of interim trail use (NITU) or abandonment served on February 25, 2011, the proceeding was reopened and a 180-day period was authorized for Union County, Ky. (Union County) to negotiate an interim trail use/rail banking agreement with WKRL for the portion of the right-of-way between milepost 48.0 at Dekoven and the Union/Webster County Line, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).²

On October 12, 2011, a decision was served, extending the NITU negotiating period for the lines in Union County and issuing a NITU authorizing Webster County, Ky., (Webster County) to negotiate an interim trail use/rail banking agreement with WKRL for the lines in Webster County. The October 2011 decision provided that the negotiating period under each NITU would run until February 20, 2012.

¹ The lines are described as follows: (1) between milepost 48.0 at Dekoven and milepost 62.5 at Blackford; (2) between milepost 0.0 at Blackford and milepost 3.8 at Pyro Wye and between milepost 3.8 and milepost 8.5 at Clay; (3) between milepost 0.0 at Costain Prep Plant and milepost 9.5 at Providence; (4) the Wheatcroft loop track, which connects line 2 and line 3 described above, between milepost 0.8 +/- on line 3 and running north towards milepost 5.6 +/- and milepost 6.0 +/- on line 2; and (5) between milepost 0.0 at Costain Prep Plant and milepost 5.5 at Caney Creek.

² In addition to interim trail use, the decision also imposed a public use condition and two salvage-related environmental conditions. By decision served on April 26, 2011, an additional salvage-related condition recommended by the Board's Office of Environmental Analysis was imposed. The public use condition expired August 25, 2011, and the previously imposed environmental conditions remain in effect.

On May 30, 2012, Webster County filed a request for an extension of its NITU negotiating period for 180 days. On June 6, 2012, WKRL filed a letter concurring with the request. On June 22, 2012, WKRL filed another letter explaining that an agreement had not been reached with either Union County or Webster County. WKRL has learned that Union County no longer wants to pursue trail use and rail banking. WKRL states that it has salvaged the lines in Union County in accordance with the Board's conditions and asks that the Board grant Webster County's requested extension of its NITU negotiation period and that the Board grant an extension of the consummation date for the portion of the lines in Union County until 30 days after the Board issues a decision addressing these requests.

Because the trail use negotiating period that ran until February 20, 2012, constituted a legal or regulatory barrier to consummation, WKRL should have filed its notice of consummation for the portion of its lines in Union County by April 20, 2012, 60 days after the expiration of that barrier to consummation. See 49 C.F.R. §§ 1152.50(e) and 1152.29(e)(2). But under the Board's regulations at § 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. While the regulations provide that an extension request should be filed sufficiently in advance of the expiration of the deadline so as to allow for timely processing, id., the request regarding the deadline for WKRL's filing of a notice of consummation for the portion of the lines in Union County was approximately two months late. In WKRL's June 22 letter, it asserts that it would be harmed if the Board did not grant the requested relief because it would be required to retain the right-of-way in Union County and go through the expense and time of another abandonment exemption. Further, WKRL states that property owners who have an interest in the right-of-way in Union County would also be harmed by the delay. Because there is no evidence that any party or other person will be adversely affected by an extension, the request for an extension of time to consummate the abandonment will be granted. See McCloud Ry.—Aban. and Discontinuance of Service Exemption—in Siskiyou, Shasta, and Modoc Cntys., Cal., AB 914X (STB served Oct. 4, 2011). Accordingly, the consummation notice filing deadline will be extended until September 5, 2012.

As noted, Webster County has requested an extension of the NITU negotiating period for 180 days for the lines located in that county. Even if a negotiation period has expired, the Board may grant an extension of the negotiation period, where, as here, a carrier consents to continuing negotiations and has not consummated the abandonment.³ Under the circumstances, an extension of the negotiation period is warranted. See 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). An extension of the negotiation period will promote the establishment of trails and rail banking for the possible future reactivation of freight rail service, both of which are consistent with the purposes of the

³ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

Trails Act. Accordingly, as sought by the parties, the negotiating period will be extended 180 days from February 20, 2012, until August 18, 2012. 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(c)(2) and (h).⁴

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

It is ordered:

1. Webster County's request to extend its NITU negotiating period is granted.
2. The negotiating period under the NITU for the lines in Webster County is extended until August 18, 2012.
3. If an interim trail use agreement is reached, the parties shall jointly file a notice with the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(c)(2) and (h).
4. The request for an extension of time to exercise abandonment authority for the portion of WKRL's lines in Union County is granted. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before September 5, 2012.
5. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

⁴ National Trails System Act and Railroad Rights-of-Way, EP 702 (STB served Apr. 30, 2012). Final rule effective May 30, 2012.