

SERVICE DATE – OCTOBER 14, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 763X)

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

Decided: October 13, 2020

In September 2016, CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 3.29-mile rail line on its Southern Region, Florence Division, Logan Subdivision, between milepost CLX 0.0 near Man and milepost CLX 3.29 near Garnette, in Logan County, W. Va. Notice of the exemption was served and published in the Federal Register on September 27, 2016 (81 Fed. Reg. 66,322).

On October 26, 2016, the proceeding was reopened and a notice of interim trail use or abandonment (NITU) was issued, authorizing Georgetown and High Line Railway Company, LLC (GHL), 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. § 1152.29.¹ By a series of decisions, the NITU negotiating period has been extended, most recently until October 24, 2020 by decision served on October 25, 2019.

On September 10, 2020, GHL requested that the Board extend the NITU negotiating period. On September 11, 2020, the National Association of Reversionary Property Owners (NARPO) replied in opposition to the extension request. On September 14, 2020, CSXT filed in response to GHL's request and consented to continue trail use negotiations. GHL replied to NARPO's filing on September 15, 2020.

NARPO argues that the period should not be extended because GHL is a “sham entity used by CSXT to drag out abandonment timetables for CSXT's own purpose(s).” (NARPO Letter 1.) However, GHL's status as a subsidiary of CSXT is insufficient to rebut the presumption that GHL is qualified to be a trail sponsor or to demonstrate that it would not engage in arm's-length negotiations. See CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla., AB 55 (Sub-No. 794X), slip op. at 5-6 (STB served June 22, 2020).

¹ The Board's 2016 decision also imposed a consultation condition and a historic preservation condition preventing consummation of the abandonment until completion of the Section 106 process under the National Historic Preservation Act and the Board's removal of the condition.

NARPO also argues that GHL must show “extraordinary circumstances” to warrant further extensions based on the Board’s decision in Limiting Extensions of Trail Use Negotiation Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019) (adopting final rule regarding the number and duration of, and standard for granting, extensions of a NITU negotiation period). GHL, in its reply, argues that it need not show extraordinary circumstances and is entitled to seek the transitional one-year extension permitted under that decision.

NARPO’s objection is without merit. Because the NITU was issued before February 2, 2017, it qualifies for the transitional one-year extension without a showing of extraordinary circumstances. See id.² Because the request is otherwise consistent with the new rule and CSXT consents to the extension, the NITU negotiating period will be extended.

Pursuant to § 1152.29(d)(1)(ii), “[p]arties may request a Board order to extend, for one-year periods, the interim trail use negotiation period.” Here, there appears to be some confusion regarding what constitutes the one-year period. In its extension request, GHL states that it initially requested issuance of a NITU on October 6, 2016, and requested that the NITU be extended through October 6, 2021. In its reply to NARPO, however, GHL states that it is entitled to ask for an extension until October 26, 2021 (stating that the issuance of the initial NITU was on October 26, 2016). (See also CSXT Reply, Sept. 14, 2020 (responding to GHL’s “one-year extension” request).) Because the NITU was last extended through October 24, 2020, the transitional one-year period is through October 24, 2021. As such, the NITU negotiating period will be extended until October 24, 2021. However, under the new rule, any further extension request will require a showing of extraordinary circumstances. See id.

It is ordered:

1. GHL’s request to extend the NITU negotiating period is granted; the negotiating period is extended until October 24, 2021.
2. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

² “[A]s a transitional measure, parties engaged in negotiations under an existing . . . NITU that was originally issued before February 2, 2017, may request **one** additional extension of one year, beyond the four-year anniversary of the issuance of the . . . NITU, *without showing extraordinary circumstances.*” Limiting Extensions of Trail Use Negotiation Periods, EP 749 (Sub-No. 1) et al., slip op. at 11 (*italics added*).