

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1296X

R. J. CORMAN RAILROAD PROPERTY, LLC—ABANDONMENT EXEMPTION—  
IN SCOTT, CAMPBELL, AND ANDERSON COUNTIES, TENN.

Decided: April 16, 2024

In February 2020, R. J. Corman Railroad Property, LLC (RJC Railroad Property), filed a verified notice under the two-year out-of-service class exemption at 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a rail line extending from milepost 0.95 at or near Oneida, Tenn., to the end of the line at milepost 42.0 at or near Devonia, Tenn., a distance of approximately 41.05 miles in Scott, Campbell, and Anderson Counties, Tenn. (the Oneida Line). Notice of the exemption was served and published in the Federal Register on March 9, 2020 (85 Fed. Reg. 13,696).

On April 17, 2020, a notice of interim trail use or abandonment (NITU) was issued permitting Tennessee Citizens for Wilderness Planning, Inc. (TCWP), and Cumberland Trail Conference, Inc., to negotiate with RJC Railroad Property for interim trail use/rail banking of the Oneida Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Thereafter, the NITU negotiating period was extended three times, most recently to April 17, 2024. See R. J. Corman R.R. Prop., LLC—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn. (October 2023 Decision), AB 1296X et al. (STB served Oct. 11, 2023). The October 2023 Decision noted that TCWP could seek a further extension of the NITU negotiating period, subject to a showing of extraordinary circumstances as provided under the Board’s regulations at 49 C.F.R. § 1152.29(d)(1)(ii). October 2023 Decision, AB 1296X et al., slip op. at 7.

On March 22, 2024, TCWP filed a request to further extend the NITU negotiating period for one more year. TCWP states that several Board decisions about the Oneida Line have precluded negotiations between TCWP and RJC Railroad Property. Specifically, TCWP points to the extensive litigation in front of the Board surrounding an offer of financial assistance under 49 U.S.C. § 10904 by another railroad to acquire the Oneida Line, its rejection, subsequent appeal, and petition for reconsideration that created uncertainty about the status of the abandonment of the Oneida Line until May of 2021. See R. J. Corman R.R. Prop., LLC—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X (STB served May 3, 2021). TCWP also notes an April 15, 2022 order of the Board prohibiting the consummation of the abandonment of the Oneida Line and a subsequent conditioning of the abandonment on the abandonment of a connecting, potentially “stranded,” line segment, which itself was not

approved until March of 2024. See R. J. Corman R.R. Prop., LLC—Aban. Exemption—in Campbell Cnty., Tenn., AB 1296 (Sub-No. 1X) (STB served Mar. 1, 2024).

On March 25, 2024, RJC Railroad Property filed a letter consenting to TCWP's request to extend the NITU negotiating period. RJC Railroad Property cites to many of the same issues TCWP raises as justification for the extension request.

When adopting its rules limiting extensions of NITU negotiating periods beyond three one-year extensions to “extraordinary circumstances,” 49 C.F.R. § 1152.29(d)(1)(ii), the Board stated that “[a] showing of ‘extraordinary circumstances’ will depend on the specific facts of each case” and that “[i]t is unlikely that issues within negotiators’ control . . . will constitute extraordinary circumstances.” Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al., slip op. at 10-11 (STB served Dec. 4, 2019). Here, TCWP has demonstrated that the extensive litigation involving the Oneida Line and the connecting line, and the resulting uncertainty surrounding the eligibility of the Oneida Line for abandonment, had a cooling effect on the negotiations for trail use and that the uncertainty was not of its own making. In this instance, that uncertainty constitutes extraordinary circumstances.

Furthermore, TCWP indicates that it wishes to continue negotiating for interim trail use on the Oneida Line, and RJC Railroad Property has agreed to negotiate. Where, as here, the rail 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 Rts.-of-Way as Trails—Suppl. Trails Act Procs., 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). For the reasons discussed above, TCWP has shown extraordinary circumstances warranting a grant of its additional extension request as provided under the Board's regulations, and the extension request will be granted. See 49 C.F.R. § 1152.29(d)(1)(ii).

It is ordered:

1. TCWP's extension request is granted, and the interim trail use negotiating period is extended until April 17, 2025.

2. This decision is effective on its date of service.

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