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SERVICE DATE – LATE RELEASE OCTOBER 1, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 656X)

CSX TRANSPORTATION, INC.–ABANDONMENT
EXEMPTION–IN MARION COUNTY, WV

Decided: October 1, 2008

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 17.51-mile line of its Southern Region, Huntington Division East, Fairmont Subdivision, between Barrackville, milepost BS 306.32, and Mannington, milepost BS 319.48, including the Dents Run Spur between milepost BSB 0.00 and milepost BSB 4.35, in Marion County, WV. Notice of the exemption was served in the Federal Register on September 8, 2005 (70 FR 53414-15). On October 6, 2005, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the Marion County Commission (County) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way in this proceeding. At the request of either CSXT or the County, the negotiation period under the NITU was extended several times; the latest decision, served on July 17, 2008, extended the NITU negotiating period until September 22, 2008.¹

On September 22, 2008, CSXT filed a request to extend the NITU negotiation period until March 20, 2009. CSXT states that it has not consummated the abandonment and has been unable to finalize negotiations, but desires to continue to negotiate for an interim trail use/rail banking agreement with the County. Additionally, CSXT requests an extension of the consummation notice filing deadline until June 19, 2009.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated the abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances described in this decision, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Because an extension of the NITU negotiating period and of the consummation notice filing deadline will promote the establishment of trail use and rail banking consistent with the National Trails

¹ That decision also extended the deadline for CSXT to file its notice of consummation of the abandonment until November 21, 2008.

System Act, 16 U.S.C. 1247(d),² the requested extensions will be granted. Accordingly, the NITU negotiation period will be extended until March 20, 2009, and the consummation notice filing deadline will be extended to June 19, 2009.³ Given the time that has elapsed since abandonment was authorized, the parties are urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. CSXT's request for an extension of the NITU negotiating period and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended until March 20, 2009.
3. The authority to abandon must be exercised on or before June 19, 2009.
4. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Acting Secretary
Anne K. Quinlan

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

³ Under 49 CFR 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.