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SERVICE DATE – OCTOBER 6, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 675X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN  
WARE COUNTY, GA

Decided: October 2, 2009

On February 1, 2008, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period, until July 31, 2008, for the City of Waycross, GA (Waycross), to negotiate an interim trail use/rail banking agreement with CSX Transportation, Inc. (CSXT) for a 1.08-mile rail line on CSXT's Southern Region, Jacksonville Division, Fitzgerald Subdivision, between mileposts AP 588.84 and AP 587.76 in Waycross, Ware County, GA.<sup>1</sup> The negotiating period under the NITU was subsequently extended, with the latest extension expiring on September 28, 2009.

By letter filed on September 18, 2009, Waycross requests a 180-day extension of the NITU negotiating period. Waycross states that the parties continue to negotiate for interim trail use/rail banking. In a response filed on September 24, 2009, CSXT states that it concurs with the extension request, has not consummated the abandonment, has been unable to finalize negotiations with Waycross, and desires to continue to negotiate for interim trail use/rail banking with Waycross. CSXT also requests an extension of the time until May 26, 2010, to file its notice of consummation.

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, 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), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for 180 days, until March 27, 2010, and the time to consummate the abandonment and file a notice of consummation will be extended until May 26, 2010.

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

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<sup>1</sup> The February 1 decision authorized the exemption subject to a self-executing environmental condition requiring CSXT to consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The request to extend the time to consummate the abandonment and file a notice of consummation is granted.
3. The negotiating period under the NITU is extended to March 27, 2010.
4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before May 26, 2010.
5. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary