

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 598X)

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

Decided: May 11, 2007

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 13.6-mile line of railroad between Rupert Junction at milepost CAH-7.2 and Clearco at milepost CAH 20.8 in Greenbrier County, WV. Notice of the exemption was served and published in the Federal Register on October 12, 2001 (66 FR 52180-81). Pursuant to 49 CFR 1152.29(e)(2), the notice stated that, if consummation had not been effected by CSXT’s filing of a notice of consummation by October 12, 2002, the authority to abandon would automatically expire. That provision provides, however, that a railroad, may for good cause shown, file a request for an extension of time to file a notice of consummation in an abandonment proceeding, if the request is filed sufficiently in advance of the deadline for notifying the Board of consummation to allow for timely processing. By decisions served October 10, 2002, April 9, 2003, October 9, 2003, and April 16, 2004, the due date for filing a notice of consummation was extended to October 9, 2004.

Under the terms of 49 CFR 1152.29(e)(2), a railroad may not consummate an authorized abandonment if there is a legal or regulatory barrier to consummation at the time of the consummation deadline. No such legal or regulatory barrier to consummation existed at the end of the 1-year period in this case, and there was no barrier to consummation as of October 9, 2004. By decision served November 7, 2001, the exemption had been made subject to the condition that CSXT retain its interest in the line in its entirety until completion of the section 106 process of the National Historic Preservation Act and the condition that CSXT consult with the National Geodetic Survey (NGS) and provide NGS with 90 days’ notice prior to disturbing or destroying any geodetic station markers. By decision served January 2, 2002, the section 106 historic preservation condition was removed. The NGS condition related to geodetic station markers remained, but this type of condition is normally not implemented unless a station marker is to be disturbed or destroyed during salvage operations, and salvage may or may not occur when a railroad consummates abandonment of a line. Therefore, NGS conditions are not a barrier to consummation of abandonments.

On April 9, 2007, CSXT filed a request for the Board to “reinstate” the abandonment and additionally seeking an extension of the deadline for filing its notice of consummation until

June 1, 2007. CSXT states that, when it sought the abandonment authority at issue, the coal mine located on the line indicated that in the future it could become economical to mine coal and that the rail property should be preserved to facilitate potential future rail service. CSXT states that it entered negotiations to lease the line to the coal mine for use as a spur and switch track that would serve the coal mine exclusively. CSXT explains that it and the coal mine have now successfully completed the negotiation of the lease of the line. CSXT states that, in order to consummate the abandonment, it must either receive reinstatement of the abandonment authority and an extension of the consummation date (so that the abandonment can be consummated immediately prior to consummating the lease), or file a new notice of exemption under 49 CFR 1152 Subpart F. CSXT asserts that there is good cause to reinstate the abandonment and grant an extension. CSXT states that the line has been out of service for more than 2 years.

CSXT failed to file for an extension of the consummation deadline before October 9, 2004, and the authority to abandon therefore automatically expired at that time. Reinstatement of the abandonment authority so long after its expiration would not be consistent with the Board's rules or the Board's intent in establishing those rules (to provide certainty for the public regarding the status of rail lines). The Board's rules specifically provide that, in the event of the automatic expiration of abandonment authority, a new proceeding would have to be instituted if the railroad wants to abandon the line. Therefore, CSXT's requests will be denied. If CSXT decides to abandon the line, it must file a new notice of exemption under 49 CFR 1152 Subpart F.¹

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 requests for reinstatement of the abandonment and an extension of time to file a notice of consummation are denied.
2. If CSXT wishes to pursue abandonment of the involved line, it must file a new verified notice of exemption.

¹ CSXT is advised that the filing of a new notice in compliance with 49 CFR 1152 Subpart F would require a new subnumber and a new filing fee.

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

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

Vernon A. Williams
Secretary