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SERVICE DATE – LATE RELEASE JANUARY 25, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 603X)

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

Decided: January 25, 2007

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 10.5 miles of railroad between milepost BUG-0.0 at Cowen and milepost BUG 10.5 at Bolair, in Webster County, WV. Notice of the exemption was served and published in the Federal Register on February 11, 2002 (67 FR 6320-21). On July 30, 2002, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for Webster County Chamber of Commerce (Webster County) to negotiate an interim trail use/rail banking agreement with CSXT for the entire right-of-way involved. At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension, granted by decision served July 18, 2006, extended the negotiating period until January 14, 2007. The July 18 decision also extended the deadline for CSXT to file its notice of consummation until March 15, 2007.

On January 16, 2007, CSXT filed a request to extend the NITU negotiation period until July 13, 2007. CSXT states that it has not consummated the abandonment and has been unable to finalize negotiations but desires to continue negotiations for interim trail use/rail banking with Webster County. CSXT also requests an extension of the consummation notice filing deadline until September 11, 2007.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated 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). Accordingly, the NITU negotiation period will be extended to July 13, 2007, and the consummation notice filing deadline will be extended to September 11, 2007.<sup>1</sup> Given the time that has elapsed since abandonment was authorized, the negotiation parties are urged to conclude their negotiations so that further extensions are not necessary.

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<sup>1</sup> Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of the time to file a notice of consummation in abandonment proceedings.

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 to extend the NITU negotiating period is granted and its request for an extension of time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended to July 13, 2007.
3. The authority to abandon must be exercised on or before September 11, 2007.
4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary