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SERVICE DATE – JULY 17, 2008

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: July 16, 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). The notice stated that, if consummation had not been effected by CSXT’s filing of a notice of consummation by September 8, 2006, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

On October 6, 2005, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and ordering CSXT to notify the National Geodetic Survey prior to beginning salvage, 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 CSXT, the negotiating period under the NITU was extended several times; the latest decision, served on September 28, 2007, extended the negotiating period until March 26, 2008. The most recent decision extending CSXT’s deadline for filing its notice of consummation of the abandonment was served on April 18, 2007, and the extended the deadline for filing that notice until November 27, 2007.

Because the trail use negotiating period that ran until March 26, 2008, was a legal or regulatory barrier to consummation, CSXT should have filed its notice of consummation by May 25, 2008, 60 days after the expiration of that barrier to consummation. On June 2, 2008, the County filed a request to extend the NITU negotiation period. Additionally, the County requested that the Board extend the deadline for consummation of the abandonment so that the parties can continue to negotiate interim trail use/rail banking over the involved line. The County states that it and CSXT have been in discussions since the last extension regarding the proposed trails and hoped to reach a final agreement in advance of the latest NITU extension. The County explains that, in addition to negotiating with CSXT, it was simultaneously working to secure funding for the trail and that, due to the County’s administrative obligations and other scheduling conflicts, it did not realize that the NITU deadline had expired. Also on June 2, 2008, CSXT filed its response stating that is agreeable to a 180-day extension of the negotiation

period until September 22, 2008, and is also agreeable to the requested extension of the consummation deadline until November 21, 2008.

Even if a negotiation period expires, when, as here, a carrier consents to continuing negotiations and to a further extension of the consummation deadline, the Board continues to have jurisdiction to grant an extension of negotiation period. Under the circumstances, an extension of the negotiation 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). An extension of the negotiation period will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, as sought by the parties, the negotiating period will be extended 180 days from March 26, 2008 (until September 22, 2008). Under the Board's regulations at 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. While the request for an extension should be filed sufficiently in advance of the expiration of a deadline to allow for timely processing, the extension request in this proceeding regarding the deadline for CSXT's filing of a notice of consummation was only approximately 1 week late, and there is no evidence that any party or other person will be adversely affected by an extension. Therefore, the request for an extension of time to consummate the abandonment and for CSXT to file its notice of consummation will also be granted. Accordingly, the consummation notice filing deadline will be extended until November 21, 2008. 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. The County's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until September 22, 2008.
3. The request for an extension of time to exercise abandonment authority is granted. The authority to abandon must be exercised on or before November 21, 2008.

4. This decision is effective on the date of service.

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

Anne K. Quinlan
Acting Secretary