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SERVICE DATE – AUGUST 22, 2007

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: August 20, 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 January 25, 2007, extended the negotiating period until July 13, 2007. The January 25 decision also extended the deadline for CSXT to file its notice of consummation until September 11, 2007.

On August 7, 2007, CSXT filed a request to extend the NITU negotiation period until January 9, 2008, to continue negotiation for trail use with Webster County.¹

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, an 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 64, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for an additional 180 days from July 13, 2007 (until January 9, 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.

¹ In a letter filed on July 10, 2007, Webster County informed the Board that it and its partners had broken off negotiations with CSXT regarding the line. However, in a letter filed July 30, 2007, Webster County stated that negotiations have been reinstated and requested that the Board disregard its previous letter.

It is ordered:

1. CSXT's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended to January 9, 2008.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary