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SERVICE DATE – LATE RELEASE OCTOBER 21, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-854X

ALLEGHENY AND EASTERN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN
ELK AND CAMERON COUNTIES, PA

Decided: October 21, 2005

Allegheny & Eastern Railroad, Inc. (A&E), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an 18.9-mile line of railroad extending between milepost 131, near St. Marys, in Elk County, and milepost 149.9, southeast of Emporium, in Cameron County, PA. Notice of the exemption was served and published in the Federal Register on September 30, 2003 (68 FR 56377-78).

By decision and notice of interim trail use or abandonment (NITU) served October 30, 2003, the proceeding was reopened and the County of Cameron (Cameron County), in cooperation with the County of Elk (Elk County), was granted a 180-day period to negotiate an interim trail use/rail banking agreement with A&E for the described line, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The negotiating period under the NITU was extended by decisions served on April 12, 2004, July 22, 2004, October 25, 2004, April 22, 2005, and July 22, 2005. The latest extension for Elk and Cameron Counties expired on October 20, 2005.

On October 13, 2005, Elk County, in cooperation with Cameron County, filed a request for an additional 180-day extension of the negotiating period, until April 18, 2006. Elk County states that the parties are negotiating, but are not likely to reach an agreement by October 20, 2005. By letter received on October 14, 2005, A&E concurs in the request to extend the negotiating period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. 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). Because an extension of the negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act, the requested extension will be granted. Accordingly, the NITU negotiating period will be extended for an additional 180 days from October 20, 2005, until April 18, 2006.

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

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The NITU negotiating period for Elk and Cameron Counties will be extended until April 18, 2006
3. This decision is effective on its service date.

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

Vernon A. Williams

Secretary