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SERVICE DATE – OCTOBER 10, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 675X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN
WARE COUNTY, GA

Decided: October 10, 2008

On February 1, 2008, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the City of Waycross, GA (Wayscross), to negotiate an interim trail use/rail banking agreement with CSX Transportation, Inc. (CSXT) for a 1.08-mile rail line on CSXT's Southern Region, Jacksonville Division, Fitzgerald Subdivision, between mileposts AP 588.84 and AP 587.76 in Wayscross, Ware County, GA. The negotiating period under the NITU expired on July 31, 2008.¹

By letter filed on October 3, 2008, CSXT requests an extension of the NITU negotiating period until April 1, 2009.² CSXT states that it has not consummated the abandonment, has been unable to finalize negotiations with Wayscross, and desires to continue to negotiate with Wayscross for interim trail use/rail banking for the line. Also, CSXT requests an extension of the time to file its notice of consummation until May 31, 2009.

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.³ 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). Accordingly, the NITU negotiating period

¹ The February 1 decision authorized the exemption subject to an environmental condition requiring CSXT to consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers. That condition remains.

² Although the request exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Union Pacific Railroad Company—Abandonment Exemption—in Lancaster County, NE, STB Docket No. AB-33 (Sub-No. 181X) (STB served June 14, 2002).

³ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

will be extended until April 1, 2009, and the time to consummate the abandonment and file a notice of consummation will be extended until May 31, 2009.

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

It is ordered:

1. The requests of CSXT to extend the NITU negotiating period and to extend the time to consummate the abandonment and file a notice of consummation are granted.
2. The NITU negotiating period is extended until April 1, 2009.
3. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before May 31, 2009.
4. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary