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SERVICE DATE - FEBRUARY 11, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 538X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--  
IN FAYETTE AND NICHOLAS COUNTIES, WV

Decided: February 10, 1997

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon approximately 15.27 miles of its line of railroad between milepost CAF-43.7, Valuation Station 1240+00 at Russ Junction and milepost CAF-58.97, Valuation Station 436+00, at Peters Junction, in Fayette and Nicholas Counties, WV. Notice of the exemption was served and published in the Federal Register on January 10, 1997 (62 FR 1489). The exemption was scheduled to become effective on February 9, 1997.

By decision served February 7, 1997, the proceeding was reopened and a 180-day public use condition was imposed at the request of the New River Gorge National River on behalf of the National Park Service (NPS). The condition required that CSXT leave the right-of-way intact, including bridges, culverts and tunnels (but not track or other rail assets) for a period of 180 days after the February 9, 1997 effective date of the exemption (i.e., until August 8, 1997), to permit NPS and any other state or local government agency, or other interested person to negotiate for acquisition of the line for public use. The decision also imposed a historic condition that required CSXT to retain its interest in and take no steps to alter the integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

On February 6, 1997, the West Virginia Scenic Railroad (WVSR) filed a formal expression of intent to file an offer of financial assistance (OFA) under 49 CFR 1152.27(c)(2) and a request to toll the 30-day period for submitting its OFA to purchase the subject line.<sup>1</sup> WVSR requests that CSXT provide it with the most recent reports on the physical condition of the involved line, traffic revenue, and data necessary to determine CSXT's estimate of net liquidation value of the line together with supporting data reflecting available real estate appraisal, assessment of the quality and quantity of track material in the line and removal cost estimates used to obtain the net liquidation value prescribed in 49 CFR 1152.27(a).

By facsimile dated February 7, 1997, CSXT objected to the request for tolling the time period to make an offer to purchase the line, noting the late filing of the pleading. CSXT further observed that, due to the public use condition imposed by decision served February 7, 1997, WVSR can negotiate for the next six months for the purchase of this line without any fear that it will sell the properties to any other party for non-public use.

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<sup>1</sup> WVSR admits that the request is filed out of time.

On February 10, 1997, WVSR filed a letter in support of its efforts to obtain additional information and additional time to file an OFA.

The Board's rules specifically state that a notice of intent to file an OFA is due 10 days after the publication of the notice of exemption in the Federal Register<sup>2</sup> (in this proceeding January 21, 1997). WVSR has offered no compelling reason why its notice of intent should be accepted despite its late filing. Accordingly, WVSR's notice of intent will be rejected, and the request to toll the time period for filing an OFA will be denied.

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

It is ordered:

1. WVSR's notice of intent is rejected and its request to toll the time period for filing an OFA is denied.
2. The decision is effective on the service date.

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

Vernon A. Williams  
Secretary

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<sup>2</sup> See 49 CFR 1152.27(c)(2)(i).