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SERVICE DATE - SEPTEMBER 17, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-550X

R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.--  
ABANDONMENT EXEMPTION--IN LEHIGH COUNTY, PA

Decided: September 14, 1999

R.J. Corman Railroad Company/Allentown Lines, Inc. (RJCN) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 1.945-mile line of railroad known as the Barber's Quarry Industrial Track between milepost 93.144 in the vicinity of Union and 3rd Streets in Allentown and milepost 95.089 in the vicinity of Lawrence Street and Lehigh Parkway in the township of Salisbury, Lehigh County, PA. Notice of the exemption was served and published in the Federal Register on September 8, 1998 (63 FR 47546-47). On October 7, 1998, a decision and notice of interim trail use or abandonment (NITU) was served, that reopened the proceeding to implement interim trail use/rail banking for the entire line under 49 CFR 1152.29 and the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and provided a 90-day period for the County of Lehigh, PA (County), to negotiate an interim trail use/rail banking agreement with RJCN for the right-of-way involved in this proceeding.<sup>1</sup> The negotiating period under the NITU expired on January 6, 1999.

On September 7, 1999, the County filed a request to extend the NITU and public use condition for 180 days. Also on September 7, 1999, RJCN advised the Board that it concurs with the requested 180-day extension of the NITU.

Because RJCN is agreeable to the extension of the negotiation period, an extension will be granted. Where as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU period may be extended.<sup>2</sup> Under the circumstances, an extension of the negotiating period is warranted. See Birt v.

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<sup>1</sup> The October 7 decision also imposed a 90-day public use condition that required RJCN to keep the right-of-way intact, including bridges, trestles, culverts and tunnels, for a period of 90 days after the effective date of the exemption to permit the County and any other state or local government agency or other interested person to negotiate for acquisition of the line for public use and an environmental condition that required RJCN to consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying the geodetic markers identified on the line.

<sup>2</sup> See Rail Abandonment--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment Exemption in OK, Docket No. AB-3 (Sub-No.

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 will be extended for 180 days from the service date of this decision.

In the October 7, 1998 decision, a 90-day public use condition was imposed that expired on January 6, 1999. In that decision, the Board informed the County that it could request an extension of up to 90 additional days for the public use condition, if necessary, but noted that section 10905 limits public use conditions to a maximum period of 180 days from the effective date of the decision approving the abandonment. The County did not file for an extension of the public use condition before expiration of the maximum 180-day period and thus it cannot now be extended.

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

It is ordered:

1. The request filed by the County to extend the NITU period is granted.
2. The negotiating period under the NITU is extended to March 15, 2000.
3. The County's request for an extension of the public use condition is denied.
4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

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63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).