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SERVICE DATE – APRIL 18, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 656X)

CSX TRANSPORTATION, INC.–ABANDONMENT
EXEMPTION–IN MARION COUNTY, WV

Decided: April 17, 2007

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 17.51-mile line of its Southern Region, Huntington Division East, Fairmont Subdivision, between Barrackville, milepost BS 306.32, and Mannington, milepost BS 319.48, including the Dents Run Spur between milepost BSB 0.00 and milepost BSB 4.35, in Marion County, WV. Notice of the exemption was served in the Federal Register on September 8, 2005 (70 FR 53414-15). On October 6, 2005, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the Marion County Commission (County) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way in this proceeding.¹ At the request of CSXT, the negotiating period under the NITU was extended by decisions served on June 22, 2005, and October 11, 2006. The latest extension expired on April 1, 2007. The October 11, 2006 decision also extended the deadline for CSXT to file its notice of consummation until May 31, 2007.

On April 6, 2007, CSXT filed a request to extend the NITU negotiation period until September 28, 2007. CSXT states that it has not consummated the abandonment and has been unable to finalize negotiations, but desires to continue to negotiate for an interim trail use/rail banking agreement with the County. Additionally, CSXT requests an extension of the consummation notice filing deadline until November 27, 2007.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated the abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances described in this decision, 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). Because an

¹ The October 6, 2005 decision and notice also made the exemption subject to an environmental condition that required CSXT to provide the National Geodetic Survey, (NGS) with 90 days' notice prior to conducting any salvage activities so that NGS may plan the relocation of the identified geodetic station markers.

extension of the NITU negotiating period and of the consummation notice filing deadline will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d),² the requested extensions will be granted. Accordingly, the NITU negotiation period will be extended until September 28, 2007, and the consummation notice filing deadline will be extended to November 27, 2007.³

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

It is ordered:

1. CSXT's request for an extension of the NITU negotiating period and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended until September 28, 2007.
3. The authority to abandon must be exercised on or before November 27, 2007.
4. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary

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

³ Under 49 CFR 1152.29(d)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.