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SERVICE DATE – FEBRUARY 15, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 665X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN HARLAN AND
LETCHER COUNTIES, KY

Decided: February 12, 2007

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 12.99-mile line of railroad on its Southern Region, Huntington Division West, Cumberland Valley Subdivision, in Harlan and Letcher Counties, KY. The line consists of a portion of the Poor Fork Branch between milepost OWC 261.1, near Cumberland, and milepost OWC 262.3, at Cumberland Junction, and the entire Scotia Branch between milepost OWD 262.21, at Cumberland Junction, and milepost OWD 274.0, near Scotia at the end of the line. Notice of the exemption was served and published in the Federal Register on April 26, 2006 (71 FR 24772). The exemption became effective on May 26, 2006.

By decision served on May 25, 2006 (May 2006 decision), the proceeding was reopened at the request of the Board’s Section of Environmental Analysis (SEA), and the exemption was made subject to six conditions.¹

In a decision and notice of interim trail use or abandonment (NITU) served on July 21, 2006, the proceeding was reopened, and the Harlan County Fiscal Court (HCFC) was granted a 180-day public use condition,² and a 180-day period to negotiate an interim trail use/rail banking agreement with CSXT for the subject line.³ The NITU negotiating period commenced from July 21, 2006, and expired on January 17, 2007.

¹ By decision served on December 13, 2006, the condition requiring CSXT to consult with the National Park Service, Southeast Region, and the Kentucky Department of Parks, prior to commencement of any salvage activities, and to report the results of those consultations in writing to SEA was removed.

² The public use condition commenced from the exemption’s May 26, 2006 effective date. The condition expired on November 22, 2006, and may not be extended.

³ This decision also removed the condition, imposed in the May 2006 decision, requiring CSXT to consult with the U.S. Fish and Wildlife Service, prior to the commencement of any salvage activities, and to report the results of the consultation in writing to SEA. The other four conditions imposed in the May 2006 decision remain in effect.

On January 12, 2007, HCFC filed a request to extend the NITU negotiating period. By letter filed on January 18, 2007, CSXT concurs with the extension request, stating that it has not consummated the abandonment of the line, that it has been unable to finalize negotiations with HCFC, and that it desires to continue negotiations. Although HCFC's extension request did not specify a time period, CSXT is agreeable to a 180-day extension.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.⁴ 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). Accordingly, the NITU negotiating period will be extended to July 16, 2007 (180 days from January 17, 2007).

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 negotiating period under the NITU is extended to July 16, 2007.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary

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