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SERVICE DATE – JUNE 30, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-876X

R.J. CORMAN EQUIPMENT COMPANY, LLC—ABANDONMENT EXEMPTION—IN
JOHNSON, MAGOFFIN AND BREATHITT COUNTIES, KY

STB Docket No. AB-875X

R.J. CORMAN RAILROAD COMPANY/BARDSTOWN LINE—DISCONTINUANCE OF
SERVICE EXEMPTION—IN JOHNSON, MAGOFFIN AND BREATHITT COUNTIES, KY

Decided: June 28, 2005

By decision and notice of interim trail use or abandonment (NITU) served on December 23, 2004, the Board granted R.J. Corman Equipment Company, LLC (RJCE) and R.J. Corman Railroad Company/Bardstown Line (RJCR) (collectively, Corman) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903. RJCE sought to abandon, and RJCR sought to discontinue service over, a line of railroad known as the Dawkins Line, extending from milepost 0.05 at Dawkins, KY, to the end of the track at milepost 36.13 near Evanston, KY, a distance of approximately 36.08 miles in Johnson, Magoffin and Breathitt Counties, KY. The exemption was granted subject to public use, environmental, and standard employee protective conditions, and the Board authorized a 180-day period for Judge Executive Roger “Tucker” Daniel and the Johnson County Fiscal Court, Judge Executive Bill May and the Magoffin County Fiscal Court, and Judge Executive Lewis Warrix and the Breathitt County Fiscal Court (collectively, the Counties), to negotiate an interim trail use/rail banking agreement with RJCE. The trail use negotiating period expired on June 21, 2005.

On June 23, 2005, Corman filed a request to extend the NITU negotiating period until December 23, 2005.¹ Corman states that the Counties have informed it that they are unable to evaluate and negotiate an agreement in the remaining time, and they have asked the railroad to request an extension. Corman is agreeable to the extension and requests that the deadline for entering into a NITU agreement be extended to December 23, 2005, which is the deadline for filing its notice of consummation.

¹ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

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. Under the circumstances, an 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). An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended until December 23, 2005.

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

It is ordered:

1. Corman's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until December 23, 2005.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary