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SERVICE DATE – AUGUST 31, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 694X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN MCMINN COUNTY, TENN.

Decided: August 30, 2010

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 6.4-mile rail line, known as the Athens Branch, on its Southern Region, Huntington-West Division, KD Subdivision between milepost OKW 327, at Englewood, and milepost OKW 333.4, at Athens, in McMinn County, Tenn. Notice of the filing was served and published in the Federal Register on May 21, 2009 (74 FR 23926-27). By decision and notice of interim trail use or abandonment (NITU) served on August 13, 2009 (August 2009 decision), the proceeding was reopened and a 180-day period was authorized for McMinn County (the County), the City of Athens, and the City of Englewood to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding.¹ The August 2009 decision also stated that, if consummation has not been effected by CSXT's filing of a notice of consummation by August 13, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. By decision served on March 11, 2010, the NITU negotiating period was extended until September 7, 2010, and CSXT's authority to abandon was extended until November 6, 2010.

On July 28, 2010, the County filed a request for an extension of the negotiating period for 180 days. The County states that it has completed an appraisal of the line and expects to be able to enter into negotiations. By letter filed on August 11, 2010, CSXT concurs with the extension request. Additionally, CSXT seeks extension of the consummation deadline to May 5, 2011.²

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 agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may

¹ The August 2009 decision also made the exemption subject to salvage conditions and a public use condition. The public use condition, which is limited by statute to 180 days, expired on March 11, 2010, and may not be extended.

² Under 49 C.F.R. § 1152.29(e)(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.

be extended.³ Accordingly, the NITU negotiating period will be extended to March 6, 2011, and the consummation notice filing deadline will be extended until May 5, 2011.⁴

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

It is ordered:

1. The County's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until March 6, 2011.
3. CSXT's request for an extension of time to consummate the abandonment is granted.
4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before May 5, 2011.
5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ See Rail Abans.–Use of Rights-Of-Way as Trails–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

⁴ The County inadvertently calculated the 180-day extension of the NITU negotiating period as ending on March 4, 2011. CSXT, in its agreement to continue to negotiate the NITU, requests the negotiation period be extended through March 6, 2010 (the 180th day).