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SERVICE DATE - FEBRUARY 9, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1182X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT
EXEMPTION--IN INDIANA COUNTY, PA

Decided: February 8, 2000

On July 31, 1998, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for the Cambria and Indiana Trail Council (CITC) to negotiate an interim trail use/rail banking agreement with Consolidated Rail Corporation (Conrail) for an 11.80-mile portion of the Blairsville Secondary Track between milepost 5.70± and milepost 17.50± in Indiana County, PA. The 180-day negotiating period under the NITU was scheduled to expire on January 27, 1999, but was extended through January 22, 2000, by decisions served February 2, 1999, and July 23, 1999.¹

On January 31, 2000, CITC filed a request to extend the negotiating period for an additional 180 days, until June 26, 2000.² CITC states that, due to the acquisition of certain Conrail assets by Norfolk Southern Corporation (NS), and the resulting transition period, negotiations between CITC and the NS affiliate, Norfolk Southern Railway Company (NSR), which is the carrier currently responsible for operations over the line, will require more time. By facsimile dated February 4, 2000, NSR advised that it has not consummated the abandonment and consents to a 180-day extension of the negotiating period.

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.³ 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),

¹ Notice of the exemption was published in the Federal Register on March 12, 1998 (63 FR 12148-49).

² As the NITU was scheduled to expire on January 22, 2000, a 180-day extension would run until July 20, 2000.

³ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, Docket No. AB-39 (Sub-No. 12) (ICC served Mar. 27, 1992).

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cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for an additional 180 days from January 22, 2000.

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

It is ordered:

1. The negotiating period under the NITU is extended to July 20, 2000.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary