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SERVICE DATE – FEBRUARY 11, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 591X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN CLARK AND FLOYD COUNTIES, IN

Decided: February 10, 2005

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 3.8-mile line of railroad between milepost B-50.5 near Clarksville and milepost B-54.3 near New Albany, in Clark and Floyd Counties, IN.¹ On August 7, 2001, a decision and notice of interim trail use or abandonment (NITU) was served reopening the proceeding and authorizing a 180-day period for the Civil Town of Clarksville, IN, the City of New Albany, IN, and the City of Jeffersonville, IN (collectively Proponents) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding.² At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension decision, served on August 6, 2004, extended the negotiation period until February 4, 2005. The August 6, 2004 decision also extended the deadline for CSXT to file its notice of consummation until April 4, 2005.

On February 9, 2005, CSXT filed a request to extend the NITU negotiation period until August 3, 2005. CSXT states that it has been unable to finalize negotiations with Proponents and that it desires to continue to negotiate. Additionally, CSXT requests an extension of the consummation notice filing deadline until October 2, 2005.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. 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). Accordingly, the NITU negotiating period will be extended to August 3, 2005, and the consummation notice filing deadline will be extended to October 2, 2005.

¹ Notice of the exemption was served and published in the Federal Register on July 9, 2001 (66 FR 35826-27).

² The August 7, 2001 decision also imposed several environmental conditions.

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 to extend the NITU negotiating period and its request for an extension of time to exercise the abandonment authority is granted.
2. The negotiating period under the NITU is extended to August 3, 2005.
3. The authority to abandon must be exercised on or before October 2, 2005.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary