

SERVICE DATE – JANUARY 4, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-876X

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

Decided: December 29, 2006

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.¹ 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 under the National Trails System Act, 16 U.S.C. 1247(d). The negotiating period under the NITU was extended by decisions served on June 30, 2005, January 5, 2006, and July 6, 2006, with the latest extension expiring on December 17, 2006.

On December 19, 2006, Big Sandy Area Development District (Big Sandy ADD)² filed a request to extend the NITU negotiating period for 180 days until June 15, 2007. Big Sandy ADD states that the feasibility study has been completed, however, funding for acquisition will not be available until early 2007. Big Sandy ADD states that Corman has authorized it to state that Corman consents to the extension request.

¹ Earlier decisions in this proceeding have embraced the discontinuance docket, STB Docket No. AB-875X, R.J. Corman Railroad Company/Bardstown Line—Discontinuance of Service Exemption—in Johnson, Magoffin and Breathitt Counties, KY.

² By letter filed on January 4, 2006, Corman explained that the Counties had arranged for Big Sandy ADD, an organization of local governmental officials and citizens, to pursue this rails-to-trails project on their behalf. They added that, if the parties are able to reach a trail use agreement, the Counties will acquire and develop the right-of-way and assume financial responsibility for the trail.

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. 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 from December 17, 2006, to June 15, 2007. The extension of the NITU negotiating period will have the effect of extending the deadline for filing a notice of consummation until August 14, 2007 (60 days after the scheduled expiration of the NITU negotiating period).

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

It is ordered:

1. Big Sandy ADD's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until June 15, 2007.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary