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SERVICE DATE – JANUARY 24, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 603X)

CSX TRANSPORTATION, INC.–ABANDONMENT
EXEMPTION–IN WEBSTER COUNTY, WV

Decided: January 23, 2006

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon approximately 10.5 miles of railroad between milepost BUG-0.0 at Cowen and milepost BUG 10.5 at Bolair, in Webster County, WV. Notice of the exemption was served and published in the Federal Register on February 11, 2002 (67 FR 6320-21).¹ On July 30, 2002, a decision and notice of interim trail use or abandonment (NITU) was served reopening the proceeding and authorizing a 180-day period for Webster County Chamber of Commerce (Webster County) to negotiate an interim trail use/rail banking agreement with CSXT for the entire line. At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension decision, served on July 29, 2005, extended the negotiation period until January 18, 2006. The July 29, 2005 decision also extended the deadline for CSXT to file its notice of consummation until March 19, 2006.²

By letter filed on January 17, 2006, CSXT requested an extension of the NITU negotiation period until July 17, 2006, stating that it has not consummated the abandonment and has been unable to finalize negotiations but desires to continue negotiations for interim trail use/rail banking with Webster County. Additionally, CSXT requested an extension of the consummation notice filing deadline until September 15, 2006.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the rail line, the Board continues to have jurisdiction to grant an extension. Under the circumstance, an extension of the negotiation 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 STB, 654, 659 (8th Cir. 1996) cert. denied, 519 U.S. 1149

¹ By decision served on March 12, 2002, the exemption was made subject to environmental and historic preservation conditions. The historic preservation condition was removed by decision served April 9, 2002. The other environmental conditions imposed in the March 12 decision remain in effect.

² Under 49 CFR 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.

(1997). Accordingly, the NITU negotiation period will be extended to July 17, 2006, and the consummation deadline will be extended to September 15, 2006.

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 negotiating period and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended to July 17, 2006.
3. The authority to abandon must be exercised on or before September 15, 2006.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary