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SERVICE DATE - OCTOBER 22, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 627X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN FLOYD COUNTY, KY

Decided: October 21, 2004

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an approximately 13.4-mile line of railroad between milepost CON 3.1 at Salisbury and milepost CON 16.5 near Clear Creek Junction, in Floyd County, KY. Notice of the exemption was served and published in the Federal Register on February 11, 2003 (68 FR 6984-85) (February 11 Notice).¹ On April 3, 2003, a decision and notice of interim trail use or abandonment (NITU), under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), was served reopening this proceeding to permit public use negotiations and to establish a 180-day period for the Floyd County Fiscal Court and Floyd County, KY (collectively, Floyd), to negotiate an interim trail use/rail banking agreement with CSXT for the entire line.² The NITU negotiating period was extended through September 30, 2004, by decisions served on September 26, 2003, and June 2, 2004.³

On October 4, 2004, CSXT filed a request for an extension of the NITU negotiating period for 6 months, until March 30, 2005. Because the parties have been unable to finalize negotiations, CSXT states that it desires to continue negotiations for interim trail use/rail

¹ The February 11 Notice stated that, if consummation has not been effected by CSXT's filing a notice of consummation by February 11, 2004, and there are no legal barriers to consummation at that time, the authority to abandon would automatically expire. The pendency of conditions, including trail use conditions, serves to extend the deadline for consummation of the abandonment until 60 days after the expiration, satisfaction, or removal of the legal or regulatory barrier to consummation. A decision served on June 2, 2004, extended this filing deadline until November 30, 2004.

² The public use condition, which is limited by statute to 180 days, has expired and may not be extended.

³ In the Board's June 2, 2004 decision, Middle Creek National Battlefield Foundation, Inc. (MCNBF), was substituted in lieu of Floyd to negotiate for interim trail use/rail banking.

banking with MCNBF. Additionally, CSXT requested an extension of the consummation notice filing deadline until May 30, 2005.⁴

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 period may be extended. 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 March 30, 2005,⁵ and the consummation notice filing deadline will be extended until May 30, 2005.

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

It is ordered:

1. CSXT's requests to extend the NITU negotiating period and to extend the consummation notice filing deadline are granted.
2. The NITU negotiating period is extended until March 30, 2005.
3. The authority to abandon must be exercised on or before May 30, 2005.
4. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary

⁴ 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.

⁵ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company–Abandonment Exemption–in Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).