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SERVICE DATE – SEPTEMBER 21, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 656X)

CSX TRANSPORTATION, INC.–ABANDONMENT  
EXEMPTION–IN MARION COUNTY, W. VA.

Decided: September 20, 2011

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F–Exempt Abandonments to abandon a 17.51-mile line of its Southern Region, Huntington Division East, Fairmont Subdivision, between Barrackville, milepost BS 306.32, and Mannington, milepost BS 319.48, including the Dents Run Spur between milepost BSB 0.00 and milepost BSB 4.35, in Marion County, W. Va. Notice of the exemption was served and published in the Federal Register on September 8, 2005 (70 Fed. Reg. 53,414-15). On October 6, 2005, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the Marion County Commission (County) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way in this proceeding. At the request of either CSXT or the County, the negotiation period under the NITU was extended several times; the latest decision, served on February 15, 2011, extended the NITU negotiating period until September 6, 2011. The February 15, 2011, decision also extended the deadline for CSXT to file its notice of consummation until November 5, 2011.

By letter dated August 8, 2011, the County filed a request to extend the NITU negotiation period. The County explains that it has entered into an agreement with CSXT for the corridors, but there are still details to the agreement that remain to be finalized, such as an environmental assessment. The County further states that these details are being worked out, and the County and CSXT hope to have everything completed and the property transferred by December 31, 2011. On August 8, 2011, CSXT filed its response stating that it concurs with the extension request and requests that the NITU be extended to March 4, 2012.<sup>1</sup>

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 agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may

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<sup>1</sup> CSXT notes that, under 49 C.F.R. § 1152.29(e)(2), the requested extension of the NITU negotiating period creates a regulatory barrier to consummation of the abandonment. For that reason, if the NITU negotiating period expires without the parties having reached an agreement, CSXT's notice of consummation will be due not later than 60 days thereafter. See 49 C.F.R. § 1152.29(e)(2).

be extended.<sup>2</sup> 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 Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended to March 4, 2012.

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

It is ordered:

1. The County's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until March 4, 2012.
3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>2</sup> See Rail Abans.—Use-of-Rights-of-Way as Trails Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).