

SERVICE DATE – JULY 30, 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: July 26, 2007

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, July 6, 2006, and January 4, 2007, with the latest extension expiring on June 15, 2007.²

On July 13, 2007, Big Sandy Area Development District (Big Sandy ADD)³ filed a request to extend the NITU negotiating period until December 31, 2007, and for filing a notice of consummation until February 29, 2008. Big Sandy ADD states that it continues to pursue

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 The January 4, 2007 decision also extended the deadline for filing a notice of consummation until August 14, 2007.

³ 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.

funding for development of a trail and that the parties have deferred further negotiations pending commitment to funding by the Commonwealth of Kentucky. Big Sandy ADD adds that Corman has authorized it to state that Corman consents to a further extension of the NITU negotiating period and the consequent deadline for filing a notice of consummation. That representation has been confirmed by Corman.

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 June 15, 2007, to December 31, 2007, and the deadline for filing a notice of consummation will be extended until February 29, 2008. Given the time that has elapsed since abandonment was authorized, however, the parties are urged to conclude their negotiations so that further extensions are not necessary.

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 for an extension of the NITU negotiating period and of the deadline for filing a consummation notice is granted.
2. The negotiating period under the NITU is extended until December 31, 2007, and the deadline for filing a notice of consummation is extended until February 29, 2008.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary