

40993
DO

SERVICE DATE – AUGUST 24, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 682X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN GREENBRIER
AND FAYETTE COUNTIES, W. VA.

Decided: August 23, 2010

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 16.7-mile line of railroad on CSXT's Southern Region, Huntington-East Division, Sewell Subdivision, between milepost CAF 27, near Rainelle, and milepost CAF 43.7, near Nallen, in Greenbrier and Fayette Counties, W. Va. Notice of the exemption was served and published in the Federal Register on April 3, 2008 (April 2008 notice) (73 Fed. Reg. 18,322-23). By decision and notice of interim trail use or abandonment (NITU) served on August 29, 2008, the proceeding was reopened and a 180-day period was authorized for Greenbrier County Commission and the Fayette County Commission (the Counties) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. By decisions served on February 24, 2009, August 25, 2009, and March 15, 2010, the NITU negotiating period was extended until August 19, 2010. The April 2008 notice stated that, if consummation has not been effected by CSXT's filing of a notice of consummation by April 3, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. By decisions served February 24, 2009, August 25, 2009, and March 15, 2010, the consummation date was extended until October 18, 2010.

On July 28, 2010, the Counties filed a request for an extension of the negotiating period for 180 days. The Counties state that the parties desire to continue negotiations for a NITU, and the county commissions and CSXT have agreed in principal to a purchase agreement. The Counties also state that the conclusion of the purchase is dependent on the completion of an environmental assessment. By letter filed on August 11, 2010, CSXT concurs with the extension request. Additionally, CSXT seeks extension of the consummation deadline until April 16, 2011.¹

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

¹ Under 49 C.F.R. § 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.

be extended.² 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. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended from August 19, 2010, to February 15, 2011, and the consummation notice filing deadline will be extended until April 16, 2011.

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

It is ordered:

1. The Counties' request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until February 15, 2011.
3. CSXT's request for an extension of time to consummate the abandonment is granted.
4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before April 16, 2011.
5. This decision is effective on its service date.

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

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