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SERVICE DATE – SEPTEMBER 17, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 449 (Sub-No. 3X)

WESTERN KENTUCKY RAILWAY, LLC – ABANDONMENT EXEMPTION – IN
WEBSTER, UNION, CALDWELL AND CRITTENDEN COUNTIES, KY.

Decided: September 14, 2012

Western Kentucky Railway, LLC (WKRL) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon all five of its remaining lines of railroad in Webster and Union Counties, Ky.¹ Notice of the exemption was served and published in the Federal Register on January 20, 2011 (76 Fed. Reg. 3,696). The exemption became effective on February 26, 2011. By decision and notice of interim trail use (NITU) or abandonment served on February 25, 2011, the proceeding was reopened and a 180-day period was authorized for Union County, Ky. (Union County) to negotiate an interim trail use/rail banking agreement with WKRL for the portion of the right-of-way between milepost 48.0 at Dekoven and the Union/Webster County Line, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).²

On October 12, 2011, a decision was served, extending the NITU negotiating period for the lines in Union County and issuing a NITU authorizing Webster County, Ky., (Webster County) to negotiate an interim trail use/rail banking agreement with WKRL for the lines in Webster County. By decision served August 6, 2012, the consummation date for the lines in

¹ The lines are described as follows: (1) between milepost 48.0 at Dekoven and milepost 62.5 at Blackford; (2) between milepost 0.0 at Blackford and milepost 3.8 at Pyro Wye and between milepost 3.8 and milepost 8.5 at Clay; (3) between milepost 0.0 at Costain Prep Plant and milepost 9.5 at Providence; (4) the Wheatcroft loop track, which connects line 2 and line 3 described above, between milepost 0.8 +/- on line 3 and running north towards milepost 5.6 +/- and milepost 6.0 +/- on line 2; and (5) between milepost 0.0 at Costain Prep Plant and milepost 5.5 at Caney Creek.

² In addition to interim trail use, the decision also imposed a public use condition and two salvage-related environmental conditions. By decision served on April 26, 2011, an additional salvage-related condition recommended by the Board's Office of Environmental Analysis was imposed. The public use condition expired August 25, 2011, and the previously imposed environmental conditions remain in effect.

Union County was extended until September 5, 2012,³ and the negotiating period under the NITU for the lines in Webster County was extended until August 18, 2012.

On August 16, 2012, Webster County filed a request for an extension of time of 180 days to “negotiate the acquisition of the line for public use.” On August 16, 2012, WKRL filed a letter agreeing to an extension of the NITU period for 180 days for the lines in Webster County. Because the public use condition expired August 25, 2011, and because WKRL concurs with the request for an extension of time to negotiate, Webster County’s August 16 filing will be considered as a request to extend the negotiating period under the NITU.

Where, as here, the carrier consents to continuing negotiations and has not consummated the abandonment, the Board retains jurisdiction and the NITU negotiating period may be extended.⁴ Under the circumstances, an extension of the negotiation 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 negotiation period will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the negotiating period will be extended for 180 days from August 18, 2012, until February 14, 2013. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat’l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012).

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

It is ordered:

1. Webster County’s request to extend its NITU negotiating period is granted.
2. The negotiating period under the NITU for the lines in Webster County is extended until February 14, 2013.
3. If an agreement for interim trail use/rail banking is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

³ On September 4, 2012, WKRL filed a notice of partial consummation of abandonment for the line in Union County between milepost 48.0 at Dekoven and the Union/Webster County line.

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

4. This decision is effective on the date of service.

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