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SERVICE DATE – LATE RELEASE FEBRUARY 15, 2011

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: February 14, 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 September 10, 2010, extended the NITU negotiating period until March 10, 2011. The September 10, 2010 decision also extended the deadline for CSXT to file its notice of consummation until May 9, 2011.

By letter dated January 20, 2011, but received on January 19, 2011, the County filed a request to extend the NITU negotiation period. The County explains that, in addition to negotiating with CSXT, it was simultaneously working to secure funding for the trail but it has not yet been advised about that funding. The County states that it has discussed this issue with CSXT, and the parties have renewed their commitment to reaching a final agreement with respect to this trail in a timely fashion. On January 20, 2011, CSXT filed its response stating that it concurs with the extension request and requests that the NITU be extended to September 6, 2011. Additionally, CSXT requests an extension of the consummation notice filing deadline until November 5, 2011.¹

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended. An extension of the negotiating period will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. § 1247(d).²

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.

² See Rail Abans.–Use-of-Rights-of-Way as Trails–Supplemental Trails Act Procedures,
(continued . . .)

Accordingly, as requested by the parties, the NITU negotiating period will be extended until September 6, 2011, and the deadline for CSXT's filing of a notice of consummation will be extended to November 5, 2011. Given the time that has elapsed since abandonment was authorized, 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. The County's request to extend the NITU negotiating period and CSXT's request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended until September 6, 2011.
3. The authority to abandon must be exercised on or before November 5, 2011.
4. This decision is effective on the date of service.

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

(continued . . .)
4 I.C.C.2d 152, 157-58 (1987).