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SERVICE DATE – OCTOBER 11, 2006

SURFACE TRANSPORTATION BOARD

DECISION

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

CSX TRANSPORTATION, INC.–ABANDONMENT  
EXEMPTION–IN MARION COUNTY, WV

Decided: October 10, 2006

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 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, WV. The notice of exemption was served in the Federal Register on September 8, 2005 (70 FR 53414-15). 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.<sup>1</sup> The negotiation period under the NITU was scheduled to expire on April 6, 2006, but was extended to October 3, 2006, by decision served June 22, 2006. The June 22, 2006 decision also extended the deadline for CSXT to file its notice of consummation until December 2, 2006.

On October 4, 2006, CSXT filed a request to extend the NITU negotiation period until April 1, 2007. CSXT states that it has been unable to finalize negotiations with the County, but that it has not consummated the abandonment and desires to continue to negotiate for an interim trail use/rail banking agreement with the County. Additionally, CSXT requests an extension of the consummation notice filing deadline until May 31, 2007.<sup>2</sup>

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated the abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances described in this decision, further extension of

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<sup>1</sup> The October 6, 2005 decision and notice also made the exemption subject to an environmental condition that required CSXT to provide the National Geodetic Survey (NGS) with 90 days' notice prior to conducting any salvage activities so that NGS may plan the relocation of the identified geodetic station markers.

<sup>2</sup> Under 49 CFR 1152.29(d)(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.

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). Because an extension of the NITU negotiating period and of the consummation notice filing deadline will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d),<sup>3</sup> the requested extensions will be granted. Accordingly, the NITU negotiation period will be extended until April 1, 2007, and the consummation notice filing deadline will be extended to May 31, 2007.

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

It is ordered:

1. CSXT's request for an extension of the NITU negotiating period and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended until April 1, 2007.
3. The authority to abandon must be exercised on or before May 31, 2007.
4. This decision is effective on the date of service.

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

Vernon A. Williams  
Secretary

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<sup>3</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).