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SERVICE DATE – LATE RELEASE DECEMBER 7, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 699X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN MCMINN
COUNTY, TENN.

Decided: December 3, 2010

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 0.22-mile line of railroad on CSXT's Southern Region, Huntington - West Division, KD Subdivision, extending from milepost OKW 333.40 to milepost OKW 333.62, in Athens, McMinn County, Tenn. Notice of the exemption was served and published in the Federal Register on October 9, 2009 (74 Fed. Reg. 52,294).

By decision and notice of interim trail use or abandonment (NITU) served on November 25, 2009, the proceeding was reopened and a 180-day period was authorized for the City of Athens (City) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. By decision served on May 21, 2010, the NITU negotiating period was extended until November 5, 2010.

On November 8, 2010, the City requested another 180-day extension of the negotiation period. By letter filed on November 9, 2010, CSXT states that it concurs with the extension request and agrees to extend the NITU until May 4, 2011. Additionally, in the letter, CSXT requests an extension of the date to consummate the abandonment to July 3, 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, the Board retains jurisdiction and the NITU negotiating period may 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 Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for an additional 180 days, until May 4, 2011.

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

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

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until May 4, 2011.
3. CSXT's request for an extension of time to consummate the abandonment is granted, and the authority to abandon must be exercised on or before July 3, 2011.
4. This decision is effective on its service date.

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