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SERVICE DATE – MARCH 28, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 645X)

CSX TRANSPORTATION, INC. ABANDONMENT EXEMPTION–IN  
FLOYD COUNTY, KY

Decided: March 23, 2007

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon service over approximately 9.1 miles of railroad between milepost COQ-1.0 at McNalley and milepost COQ-10.1 near East David, in Floyd County, KY. Notice of the exemption was served and published in the Federal Register on February 9, 2004 (69 FR 6014).<sup>1</sup> On March 9, 2004, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and, among other things, authorizing a 180-day period for Middle Creek National Battlefield Foundation, Inc. (Middle Creek), to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding.<sup>2</sup> At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension decision, served on September 6, 2006, extended the negotiation period until February 28, 2007. The September 6, 2006 decision also extended the deadline for CSXT to file its notice of consummation until April 28, 2007.

On March 7, 2007, CSXT filed a request to extend the NITU negotiation period until August 27, 2007. CSXT states that it has not consummated the abandonment and has been unable to finalize negotiations with Middle Creek, and that it desires to continue to negotiate for

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<sup>1</sup> The February 9, 2004 notice stated that, if consummation has not been effected by CSXT's filing of a notice of consummation by February 9, 2005, and there are no legal or regulatory barriers to consummation at that time, the authority to abandon would automatically expire. The pendency of conditions, including interim trail use/rail banking conditions, served to extend the deadline to consummate the abandonment until 60 days after expiration, satisfaction, or removal of the legal or regulatory barrier to consummation.

<sup>2</sup> The March 9, 2004 decision also imposed a National Geodetic Survey (NGS) condition and a section 106 historic preservation condition. By decision served January 21, 2005, the section 106 historic preservation condition was removed. The January 21, 2005 decision noted that the NGS condition remained in effect.

interim trail use/rail banking with Middle Creek. Additionally, CSXT requests an extension of the consummation notice filing deadline until October 25, 2007.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. 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. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for an additional 180 days from February 28, 2007 (until August 27, 2007), and the deadline for CSXT's filing of a notice of consummation will be extended until October 25, 2007. Given the time that has elapsed since abandonment was authorized, the negotiation parties are urged to conclude their negotiations so that further extension are not necessary.

This action 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 August 27, 2007.
3. The authority to abandon must be exercised on or before October 25, 2007.
4. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary