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SERVICE DATE – FEBRUARY 16, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 501X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN LUCAS AND  
WOOD COUNTIES, OHIO

Decided: February 15, 2011

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 2.15 miles of railroad between milepost CO-14.31 at River Road in Lucas County, Ohio, and milepost CO-16.46 at Bates in Wood County, Ohio. Notice of the exemption was served and published in the Federal Register on March 8, 1995 (60 Fed. Reg. 12,783). The exemption became effective on April 7, 1995.

The Interstate Commerce Commission’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on March 16, 1995. In the EA, SEA recommended that a condition be imposed requiring CSXT to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f. By decision served April 7, 1995, the recommended condition was imposed.

On July 2, 2010, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for Metroparks of the Toledo Area (Metroparks), to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way. The negotiating period under the NITU expired on December 29, 2010.

By letter filed on January 13, 2011, Metroparks requests an extension of the NITU negotiating period until June 30, 2011.<sup>1</sup> Metroparks states that the parties have reached an agreement in principal, are diligently working to finalize the agreement, but additional time is needed in order to complete the negotiating process. By letter filed on January 18, 2011, CSXT agrees to the extension request. Also, CSXT requests the Board to confirm that the consummation deadline for the abandonment will be August 29, 2011, if trail negotiations are unsuccessful.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to

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<sup>1</sup> Although the request exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., S. Pac. Transp. Co.—Aban. Exemption—Wendel-Alturas Line in Modoc and Lassen Counties, Cal., AB 12 (Sub-No. 184X) (served Sept. 1, 2005).

grant an extension. 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).<sup>2</sup> Accordingly, the NITU negotiation period will be extended until June 30, 2011, and the deadline to consummate the abandonment and file a notice of consummation will be August 29, 2011.<sup>3</sup>

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

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended until June 30, 2011.
3. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before August 29, 2011.
4. This decision is effective on the date of service.

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

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

<sup>3</sup> Under the Board's rules at 49 C.F.R. § 1152.29(e)(2), a railroad is required to file a notice of consummation within 60 days after expiration of a legal or regulatory barrier. Since the extension request granted herein is scheduled to expire on June 30, 2011, CSXT's deadline for filing its notice of consummation is August 29, 2011.