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SERVICE DATE – MARCH 15, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 682X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN GREENBRIER
AND FAYETTE COUNTIES, WV

Decided: March 12, 2010

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 16.7-mile line of railroad on CSXT's Southern Region, Huntington-East Division, Sewell Subdivision, between milepost CAF 27, near Rainelle, and milepost CAF 43.7, near Nallen, in Greenbrier and Fayette Counties, WV. Notice of the exemption was served and published in the Federal Register on April 3, 2008 (April 2008 notice) (73 FR 18322-23). By decision and notice of interim trail use or abandonment (NITU) served on August 29, 2008, the proceeding was reopened and a 180-day period was authorized for Greenbrier County Commission and the Fayette County Commission (the Counties) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. By decisions served on February 24, 2009, and August 25, 2009, the NITU negotiating period was extended until February 20, 2010. The April 2008 notice stated that, if consummation has not been effected by CSXT's filing of a notice of consummation by April 3, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. By decisions served February 24, 2009, and August 25, 2009, the consummation date was extended until April 21, 2010.

On February 16, 2010, the Counties filed a request for an extension of the negotiating period for 180 days. The Counties state that the parties desire to continue negotiations for a NITU and recently, the county commissions and CSXT have agreed in principal to a purchase agreement. The Counties also state that the purchase agreement is being reviewed, and funding sources are being put in place that will lead to a purchase of the corridor. By letter filed on February 18, 2010, CSXT concurs with the extension request. Additionally, CSXT seeks extension of the consummation deadline until October 18, 2010.¹

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 by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may

¹ Under 49 CFR 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.

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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended to August 19, 2010, and the consummation notice filing deadline will be extended until October 18, 2010.

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

It is ordered:

1. The Counties' request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until August 19, 2010.
3. CSXT's request for an extension of time to consummate the abandonment is granted.
4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before October 18, 2010.
5. This decision is effective on its service date.

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

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