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SERVICE DATE - DECEMBER 28, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 574X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--IN
HARLAN COUNTY, KY

Decided: December 27, 1999

On June 23, 1999, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for the Harlan County Fiscal Court (HCFC) to negotiate an interim trail use/rail banking agreement with CSX Transportation, Inc. (CSXT) for approximately 1.05-mile line of railroad between milepost OYC-250.40 at Evarts and milepost OYC-251.45 at Woods, in Harlan County, KY.¹ The 180-day period under the NITU was scheduled to expire on December 17, 1999.²

By letter dated December 9, 1999, and filed on December 23, 1999, CSXT requested an extension of the NITU negotiation period for an additional 90 days (or until March 16, 2000). CSXT states that the parties (CSXT and Harlan County) were unable to reach an agreement during the 180-day period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.³ 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), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for an additional 90 days from December 17, 1999.

¹ Notice of the exemption was served and published in the Federal Register on May 21, 1999 (64 FR 27852).

² The June 23 decision also imposed a 180-day public use condition requiring CSXT to leave the right-of-way intact, including bridges, trestles, culverts and tunnels and similar structures for a period of 180 days from the June 20, 1999 effective date. The 180-day period for the public use condition expired on December 17, 1999.

³ See Rail Abandonments Supplement Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).

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

It is ordered:

1. The negotiating period under the NITU is extended for an additional 90 days to March 16, 2000.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary