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SERVICE DATE – SEPTEMBER 12, 2011

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: September 12, 2011

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. pt. 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, W. Va. Notice of the exemption was served and published in the Federal Register on April 3, 2008 (April 2008 notice) (73 Fed. Reg. 18,322-23). 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, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). By a series of decisions served from February 24, 2009, to March 9, 2011, the NITU negotiating period was extended until August 14, 2011.

On August 15, 2011, the Counties filed a request for an extension of the negotiating period for 180 days. The Counties state that the purchase of the property was made available through a grant through the West Virginia Division of Transportation, Division of Highways (Division of Highways), Recreation Trail program. The Counties state that the parties have concluded a final NITU agreement, but that the Division of Highways has not yet disbursed the grant funds to pay for the trail. The Counties anticipate that the final disbursement will be completed within the next 60 days. By letter filed on August 29, 2011, CSXT concurs with the extension request.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

¹ CSXT notes that, under 49 C.F.R. § 1152.29(e)(2), the requested extension of the NITU negotiating period creates a regulatory barrier to consummation of the abandonment. For that reason, if the NITU negotiating period expires without the parties having reached an agreement, CSXT's notice of consummation will be due not later than 60 days thereafter. See 49 C.F.R. § 1152.29(e)(2).

by agreeing to an extension, 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 Village v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended to February 10, 2012.

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 February 10, 2012.
3. This decision is effective on its service date.

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

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