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SERVICE DATE – MAY 21, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 699X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN MCMINN
COUNTY, TENN.

Decided: May 19, 2010

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 C.F.R. § 1152 Subpart F—Exempt Abandonments to abandon a 0.22-mile line of railroad on CSXT's Southern Region, Huntington - West Division, KD Subdivision, extending from milepost OKW 333.40 to milepost OKW 333.62, in Athens, McMinn County, Tenn. Notice of the exemption was served and published in the Federal Register on October 9, 2009 (74 Fed. Reg. 52,294).

By decision and notice of interim trail use or abandonment (NITU) served on November 25, 2009, the proceeding was reopened and a 180-day period was authorized for the City of Athens (City) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding.

On May 6, 2010, the City requested an extension of the negotiation period until November 5, 2010. The City states that CSXT is currently conducting an appraisal of the line, and the City expects to be able to enter negotiations with CSXT after completion of the appraisal.

By letter filed on May 10, 2010, CSXT states that it concurs with the extension request to extend the NITU. Accordingly, in that same letter, CSXT requests an extension of the date to consummate the abandonment to January 4, 2011.¹

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, 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. Missouri Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for an additional 180 days, until November 5, 2010.

¹ Under 49 C.F.R. § 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.

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

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

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until November 5, 2010.
3. CSXT's request for an extension of time to consummate the abandonment is granted, and the authority to abandon must be exercised on or before January 4, 2011.
4. This decision is effective on its service date.

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