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SERVICE DATE – FEBRUARY 7, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 603X)

CSX TRANSPORTATION, INC.–ABANDONMENT  
EXEMPTION–IN WEBSTER COUNTY, WV

Decided: February 4, 2005

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon approximately 10.5 miles of railroad between milepost BUG-0.0 at Cowen and milepost BUG 10.5 at Bolair, in Webster County, WV. Notice of the exemption was served and published in the Federal Register on February 11, 2002 (67 FR 6320-21). On July 30, 2002, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for Webster County Chamber of Commerce (Webster County) to negotiate an interim trail use/rail banking agreement with CSXT for the entire right-of-way involved. At the request of CSXT, the negotiating period under the NITU was extended by decisions served January 23, 2003, July 24, 2003, December 22, 2003, and August 11, 2004, with the latest extension expiring on January 23, 2005. The August 11, 2004 decision also extended the deadline for CSXT to file its notice of consummation until March 23, 2005.

On January 26, 2005, CSXT filed a request to extend the NITU negotiation period until July 22, 2005. CSXT states that it has not consummated the abandonment and has been unable to finalize negotiations with Webster County. Additionally, CSXT requests an extension of the consummation notice filing deadline until September 19, 2005.

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 grant an extension. Under the circumstances, an 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 64, 659 (8th Cir. 1996) cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended until July 22, 2005,<sup>1</sup> and the consummation notice filing deadline will be extended to September 19, 2005.

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<sup>1</sup> Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., CSX Transportation, Inc.–Abandonment Exemption–in Jefferson County, AL, STB Docket No. AB-55 (Sub-No. 613X) (STB served Oct. 22, 2004).

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

It is ordered:

1. CSXT's request to extend the NITU negotiating period is granted and its request for an extension of time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended to July 22, 2005.
3. The authority to abandon must be exercised on or before September 19, 2005.
4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary