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SERVICE DATE – SEPTEMBER 24, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 645X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN
FLOYD COUNTY, KY

Decided: September 21, 2007

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon service over approximately 9.1 miles of railroad between milepost COQ-1.0 at McNalley and milepost COQ-10.1 near East David, in Floyd County, KY. Notice of the exemption was served and published in the Federal Register on February 9, 2004 (69 FR 6014). On March 9, 2004, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and, among other things, authorizing a 180-day period for Middle Creek National Battlefield Foundation, Inc. (Middle Creek), to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension decision, served on March 28, 2007, extended the negotiation period until August 27, 2007. The March 28, 2007 decision also extended the deadline for CSXT to file its notice of consummation until October 25, 2007.

On August 29, 2007, CSXT filed a request to extend the NITU negotiation period until February 23, 2008. CSXT states that it has not consummated the abandonment and has been unable to finalize negotiations with Middle Creek, and that it desires to continue to negotiate for interim trail use/rail banking with Middle Creek. Additionally, CSXT requests an extension of the consummation notice filing deadline until April 23, 2008.¹

Even if a negotiating 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 654, 659 (8th Cir. 1996). An extension of the negotiating period would promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d).² Accordingly, the NITU negotiating period will be extended for

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.

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

an additional 180 days from August 27, 2007 (until February 23, 2008), and the consummation notice filing deadline will be extended to April 23, 2008. Given the time that has elapsed since abandonment was authorized, the parties are urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. CSXT's request for an extension of the NITU negotiating period and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended until February 23, 2008.
3. The authority to abandon must be exercised on or before April 23, 2008.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary