

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-876X

R.J. CORMAN EQUIPMENT COMPANY, LLC—ABANDONMENT EXEMPTION—IN  
JOHNSON, MAGOFFIN AND BREATHITT COUNTIES, KY

Decided: September 12, 2008

By decision and notice of interim trail use or abandonment (NITU) served on December 23, 2004, the Board granted R.J. Corman Equipment Company, LLC (RJCE) and R.J. Corman Railroad Company/Bardstown Line (RJCR) (collectively, Corman) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903. RJCE sought to abandon, and RJCR sought to discontinue service over, a line of railroad known as the Dawkins Line, extending from milepost 0.05 at Dawkins, KY, to the end of the track at milepost 36.13 near Evanston, KY, a distance of approximately 36.08 miles in Johnson, Magoffin and Breathitt Counties, KY.<sup>1</sup>

The exemption was granted subject to public use, environmental, and standard employee protective conditions, and the Board authorized a 180-day period for Judge Executive Roger “Tucker” Daniel and the Johnson County Fiscal Court, Judge Executive Bill May and the Magoffin County Fiscal Court, and Judge Executive Lewis Warrix and the Breathitt County Fiscal Court (collectively, the Counties), to negotiate an interim trail use/rail banking agreement with RJCE under the National Trails System Act, 16 U.S.C. 1247(d). The negotiating period under the NITU was extended several times with the latest extension for the Counties’ negotiations expiring on December 31, 2007.

By pleading filed on December 31, 2007, the Kentucky Rails to Trails Council (KRTC)<sup>2</sup> stated that, on December 17, 2007, Big Sandy Area Development District (Big Sandy ADD)<sup>3</sup>

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<sup>1</sup> Earlier decisions in this proceeding have embraced the discontinuance docket, STB Docket No. AB-875X, R.J. Corman Railroad Company/Bardstown Line—Discontinuance of Service Exemption—in Johnson, Magoffin and Breathitt Counties, KY.

<sup>2</sup> KRTC is a non-profit organization whose mission is to promote and develop rail trails in Kentucky.

<sup>3</sup> By letter filed on January 4, 2006, Corman explained that the Counties had arranged for Big Sandy ADD, an organization of local governmental officials and citizens, to pursue this rails-to-trails project on their behalf. They added that, if the parties are able to reach a trail use agreement, the Counties would acquire and develop the right-of-way and assume financial responsibility for the trail.

requested that KRTC replace it as the interim trail use proponent with respect to the line. By decision served on January 23, 2008, the Board vacated the NITU served on December 23, 2004, and granted the request to substitute KRTC as interim trail user for a period of 180 days until July 21, 2008.

On August 22, 2008, KRTC filed a request for an additional 180-day NITU negotiating period. KRTC states that it will continue to pursue funding for development of a trail and that the parties have deferred further negotiations pending a commitment to funding by the Commonwealth of Kentucky. KRTC adds that Corman has authorized it to state that Corman consents to a further extension of the NITU negotiating period and the consequent deadline for filing a notice of consummation.

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 by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. 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). Accordingly, the NITU negotiating period will be extended from July 21, 2008, to January 17, 2009. The extension of the NITU negotiating period will have the effect of extending the deadline for filing a notice of consummation until March 18, 2009 (60 days after the scheduled expiration of the NITU negotiating period).

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

It is ordered:

1. KRTC's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until January 17, 2009.
3. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary