

39737
DO

SERVICE DATE – FEBRUARY 24, 2009

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: February 23, 2009

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 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, WV. Notice of the exemption was served and published in the Federal Register on April 3, 2008 (April 2008 notice) (73 FR 18322-23).

By decision and notice of interim trail use or abandonment (NITU) served on August 29, 2008, the Board reopened the proceeding and terminated a previously imposed financial assistance process, imposed a public use condition, and authorized Greenbrier County Commission and the Fayette County Commission (the Counties) to negotiate during a 180-day period (until February 25, 2009) an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. The April 2008 notice stated that, if consummation has not been effected by CSXT's filing of a notice of consummation by April 3, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

On February 9, 2009, the Counties filed a request for an extension of the negotiating period for 180 days. The Counties state that, although CSXT and the Counties have not reached an agreement regarding the NITU, the county commissioners have received an appraisal from CSXT, and discussions are proceeding on a number of issues. By letter filed on February 11, 2009, CSXT concurs with the extension request. Additionally, CSXT seeks extension of the consummation deadline until October 23, 2009.¹

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended.² An extension of time will promote the establishment of trails and rail

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 (1987).

banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended until August 24, 2009, and the consummation notice filing deadline will be extended until October 23, 2009.

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 August 24, 2009.
3. CSXT's request for an extension of time to consummate the abandonment is granted.
4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before October 23, 2009.
5. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary