

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: September 14, 2004

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). The notice stated that, if consummation has not been effected by CSXT's filing of a notice of consummation by February 5, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. On March 9, 2004, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and 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 in this proceeding.¹ The negotiating period under the NITU was scheduled to expire on September 6, 2004.

On September 7, 2004, CSXT filed a request to extend the NITU negotiating period until March 6, 2005. CSXT states that the parties have been unable to finalize negotiations but 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 5, 2005.²

¹ The March 9, 2004 decision also imposed a public use condition (that expired on September 6, 2004) and imposed conditions that required CSXT to: (1) consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers on the line; and (2) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

² 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.

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 described in this decision, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1966); Grantwood Village v. Missouri Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended until March 6, 2005,³ and the consummation notice filing deadline will be extended to April 5, 2005.

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 March 6, 2005.
3. The authority to abandon must be exercised on or before April 5, 2005.
4. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary

³ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company-Company-Abandonment Exemption-In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).