

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: May 25, 2005

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 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.¹ At the request of CSXT the negotiation period under the NITU was extended to March 6, 2005, by decision served September 14, 2004. The September 14 decision also extended the deadline for CSXT to file its notice of consummation until April 5, 2005.

On May 16, 2005, CSXT filed a request to extend the NITU negotiation period until September 2, 2005. CSXT states that it has not consummated the abandonment and has been unable to finalize negotiations with Middle Creek, and 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 November 1, 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. 1966); Grantwood Village v. Missouri Pac.R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996) cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended until September 2, 2005, and the consummation notice filing deadline will be extended to November 1, 2005.

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

¹ The March 9, 2004 decision also imposed an National Geodetic Survey (NGS) condition and a section 106 historic preservation condition. By decision served January 21, 2005, the section 106 historic preservation condition was removed. The January 21 decision noted that the NGS condition remained in effect.

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 is granted.
2. The negotiating period under the NITU is extended to September 2, 2005.
3. The authority to abandon must be exercised on or before November 1, 2005.
4. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary