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SERVICE DATE – NOVEMBER 2, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 675X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN
WARE COUNTY, GA.

Decided: October 29, 2010

On February 1, 2008, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period, until July 31, 2008, for the City of Waycross, Ga. (Waycross), to negotiate an interim trail use/rail banking agreement with CSX Transportation, Inc. (CSXT) for a 1.08-mile rail line on CSXT's Southern Region, Jacksonville Division, Fitzgerald Subdivision, between mileposts AP 588.84 and AP 587.76 in Waycross, Ware County, Ga.¹ The negotiating period under the NITU was subsequently extended, with the latest extension expiring on September 23, 2010.

By letter filed on September 13, 2010, Waycross requests another 180-day extension of the NITU negotiating period. Waycross states that the parties continue to negotiate for interim trail use/rail banking. In a response filed on October 14, 2010, CSXT states that it concurs with the extension request, has not consummated the abandonment, has been unable to finalize negotiations with Waycross, and desires to continue to negotiate for interim trail use/rail banking with Waycross. CSXT also requests an extension of the time until May 21, 2011, to file its notice of consummation.²

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated the abandonment of the line, the Board continues to have jurisdiction to grant an extension.³ 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

¹ The February 1 decision authorized the exemption subject to a self-executing environmental condition requiring CSXT to consult with the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

² Under 49 C.F.R. § 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.

³ See Rail Abans.—Use-of-Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

period will be extended from September 23, 2010, to March 22, 2011, and the consummation notice filing deadline will be extended from November 22, 2010, to May 21, 2011.

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

It is ordered:

1. The requests by Waycross for an additional 180-day NITU negotiating period and by CSXT to extend the time to exercise its abandonment authority are granted.
2. The negotiating period under the NITU is extended to March 22, 2011.
3. The authority to abandon must be exercised on or before May 21, 2011.
4. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.