

BAILEY 

 GRANTED Office of Proceedings	DECISION ID NO.: <u>45614</u>
	DECIDED DATE: <u>12/23/16</u>
	SERVICE DATE: <u>12/27/2016</u>
	APPROVED: <u>Rachel D. Campbell</u> Director
	December 20, 2016 ☒ <u>extended to 1/24/17</u>

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Via E-Filing

ENTERED

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 2043-0001

Office of Proceedings
December 20, 2016
Part of
Public Record

Re: *Norfolk Southern Railway Company – Abandonment, Discontinuance of Trackage Rights and Discontinuance of Service – in Cleveland and Rutherford Counties, N.C., and Cherokee County, S.C.*
STB Docket No. AB-290 (Sub-No. 327X)

Dear Ms. Brown:

The City of Shelby (the “City”), a North Carolina municipal corporation, hereby petitions the Surface Transportation Board (the “Board”) for an order extending the time period for reaching an agreement for interim trail use/rail banking in the above-referenced docket by 180 days, to and including July 24, 2017.

On June 16, 2015, Norfolk Southern Railway Company (“NSR”) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F to abandon and discontinue trackage rights and services as follows: (1) NSR will abandon approximately 11.85 miles of rail line in Cleveland County, N.C., consisting of two line segments, one of which is located between milepost SB 144.55 and milepost SB 154.50 and the other between milepost SB 158.10 and milepost SB 160.00 (collectively, the “Line”); (2) NSR will discontinue trackage rights granted to it by CSX Transportation, Inc. (“CSXT”) over approximately 22.8 miles of CSXT track, located in Cleveland and Rutherford Counties, N.C., between milepost SF 384.6 and milepost SF 407.4; and (3) NSR will discontinue service over approximately 3.20 miles of rail line in Cherokee County, S.C., extending between milepost SB 144.55 and milepost SB 141.35.

On June 18, 2015, the City filed a request for the issuance of a notice of interim trail use (“NITU”) to negotiate with NSR for acquisition of the Line for use as a trail under the National Trails System Act (the “Trails Act”), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. In a response filed on June 22, 2015, NSR indicated its willingness to negotiate with the City for interim trail use and its support for the City’s request.

On August 4, 2015, the Board issued its Decision and Notice of Interim Trail Use or Abandonment providing for a 180-day period concluding on January 31, 2016 for negotiations between the City and NSR to reach an agreement for interim trail use/trail banking.

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Promptly after the issuance of the Decision, the City initiated negotiations with NSR regarding the City's desire to acquire the Line for trail use under the Trails Act. In connection with the negotiations, NSR ordered an appraisal of the Line. At the time, the appraiser indicated that the appraisal would not be complete until April or May of 2016. Accordingly, on December 4, 2015, the City filed a request with the Board seeking a 180-day extension of the negotiation period. By letter filed December 7, 2015, NS indicated its consent to the extension. And by order entered December 14, 2015, the Board granted the extension, to July 29, 2016.

On June 1, 2016, citing the then-still uncompleted appraisal, the City filed an extension request with the Board seeking another 180-day extension of the negotiation period. On June 7, 2016, NS filed a letter with the Board consenting to the requested extension. The Board granted the extension on June 9, 2016, extending the negotiation period to January 27, 2017.

The appraisal has since been completed. The parties are communicating regarding the appraisal and financial arrangements attendant to any proposed acquisition, but have not yet completed those discussions. If the discussions prove successful, a purchase agreement would need to be negotiated followed by a period of customary due diligence prior to the consummation of any transaction. It is anticipated that these activities will consume several months, at a minimum.

Accordingly, the City respectfully requests that the Board issue an order extending the negotiation period for an additional 180 days, to and including July 24, 2017.

The City, as a governmental entity, also respectfully requests a waiver of the Board's filing fees in accordance with 49 C.F.R. § 1002.2(e)(1). Should you have any questions, please do not hesitate to contact me.

By my signature below, I hereby certify that a copy of this letter request is being served on NSR, c/o William A. Mullins, Esq., Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., #300, Washington, DC 20037, WMullins@bakerandmiller.com, by electronic mail and by U.S. Mail, postage pre-paid, first class, on the same date it is being served on the Board.

Respectfully submitted,

BAILEY & DIXON, LLP

By:



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