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SERVICE DATE – OCTOBER 10, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 250X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–
IN CHAMPAIGN COUNTY, IL

Decided: October 9, 2007

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an approximately 0.18-mile rail line extending between approximately milepost UM 28.50 and milepost 28.68 in Urbana, Champaign County, IL. Notice of the exemption was served and published in the Federal Register on November 30, 2004 (69 FR 69682-83). By decision and notice of interim trail use or abandonment (NITU) served on December 29, 2004, the proceeding was reopened and a 180-day period was authorized for the Urbana Park District (District), the City of Urbana, and the Champaign County Design and Conservation Foundation to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way involved in this proceeding.¹ The trail use negotiating period was scheduled to expire on June 27, 2005. By decisions served on June 22, 2005, December 23, 2005, and June 21, 2006, the NITU negotiating period was extended until December 19, 2006.

On July 2, 2007, NSR filed a request for an extension of the NITU negotiating period until December 16, 2007. NSR's request includes a copy of a letter from the District, requesting an extension until that date and indicating that two separate District requests, dated October 30, 2006, and April 3, 2007, for extensions of the trail use negotiating period were not filed with the Board but were instead misdirected to NSR's parent, Norfolk Southern Corporation. NSR's request states that the abandonment has not been consummated, and that it continues to negotiate with the District. By separate filing, also on July 2, 2007, the District requested extension of the NITU negotiating period until December 16, 2007.

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. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the negotiating period

¹ The decision and notice also made the exemption subject to a salvage condition and to a public use condition. The public use condition, which is limited by statute to 180 days, expired on June 28, 2005, and may not be extended.

will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d).² Accordingly, the NITU negotiating period will be extended, as requested, until December 16, 2007, to allow NSR and the District to negotiate.

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

It is ordered:

1. NSR's request to extend the NITU negotiating period as it pertains to the District is granted.
2. The negotiating period under the NITU is extended until December 16, 2007.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).