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SERVICE DATE – FEBRUARY 21, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 261X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN SPARTANBURG, SC

Decided: February 20, 2007

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.92-mile line of railroad between former milepost W 68.69 and former milepost W 70.61, in Spartanburg, SC.¹ Notice of the exemption was served and published in the Federal Register on July 20, 2005 (70 FR 41813-14).² The exemption became effective on August 19, 2005.

By decision and notice of interim trail use or abandonment (NITU) served on August 18, 2005, the proceeding was reopened and a 180-day period was authorized for the Palmetto Conservation Foundation (PCF) to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way in this proceeding.³ The negotiation period under the NITU was extended by decisions served on March 7, 2006, and August 15, 2006. The latest extension expired on February 15, 2007.

On February 2, 2007, PCF filed another request to extend the NITU negotiating period until August 15, 2007. PCF states that the parties are close to an agreement, but do not anticipate being able to complete the negotiations by the February 15 deadline. PCF also states that the

¹ According to NSR, the line mileposts are described as former because a new main line replaced the subject line as the main line many years ago and the construction of the new main line resulted in the subject line becoming a stub-end branch line. NSR also states that the milepost numbers were reused on the new line and no new milepost designations were given to the subject line.

² The Federal Register notice published on July 20, 2005, was corrected by Federal Register notice published on August 3, 2005 (70 FR 44719), to reflect the correct United States Postal Service Zip Codes 29302 and 29306.

³ The August 18, 2005 decision and notice also imposed one environmental condition and a public use condition. The environmental condition remains in effect, and the public use condition, which is limited by statute to 180 days, expired on February 15, 2006, and may not be extended.

extension is necessary to work out final details and draft agreements. In a response submitted on February 2, 2007, NSR consents to the requested extension of the NITU negotiating period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.⁴ 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). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended from February 15, 2007, to August 15, 2007.⁵

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

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to August 15, 2007.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

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

⁵ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., CSX Transportation, Inc.—Abandonment Exemption—In Jefferson County, AL, STB Docket No. AB-55 (Sub-No. 613X) (STB served Oct. 22, 2004).