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Adam N.

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May 23, 2017

Via E-Filing

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

ENTERED
Office of Proceedings
May 23, 2017
Part of
Public Record

DECISION ID NO.: 45860
DECIDED DATE: 5/26/17
SERVICE DATE: 5/30/17
APPROVED: <i>Richard E. Langston</i> Director
☒ <i>Added to 1/22/18.</i>

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 January 22, 2018.¹

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.

FILING FEE WAIVED

¹ The current deadline to reach an agreement is July 24, 2017. One hundred eighty days from July 24, 2017 falls on Saturday, January 20, 2018. Consistent with 49 C.F.R. § 1104.7(a), the City requests that the Board extend the time period to Monday, January 22, 2018.

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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.

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 for the Line. The appraisal was completed in the latter half of 2016. Since then, the parties have been engaged in engaged in communications regarding the appraisal and financial arrangements attendant to any proposed acquisition.

The City has previously sought (with the consent of NSR), and obtained, 180-day extensions of the negotiation period on December 4, 2015, June 1, 2016 and, most recently, December 20, 2016. The last extension resulted in the current deadline of July 24, 2017.

Since the December 2016 extension request, negotiations progressed to the point where the City made an offer to NSR. While NSR did not accept that offer, the parties continue to negotiate in good faith towards the development of mutually acceptable terms for the purchase of the Line by the City. If the parties reach an agreement on terms, 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 more 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 January 22, 2018.

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,

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By:



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