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SERVICE DATE – AUGUST 31, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 291X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
GRANT COUNTY, IN

Decided: August 28, 2009

By decision and notice of interim trail use or abandonment (NITU) served on January 28, 2008, a 180-day period was authorized for the City of Marion, IN, and Greenways Foundation, Inc. (together, proponents), to negotiate an interim trail use/rail banking agreement with Norfolk Southern Railway Company (NSR) for 3.66 miles of rail line between mileposts TS 153.35 and TS 157.01 at Marion, in Grant County, IN. The negotiating period under the NITU was extended by two decisions, with the latest extension expiring on August 20, 2009.

By letter filed on August 24, 2009, proponents have requested another 180-day extension of the NITU negotiating period. Proponents state that the parties remain engaged in discussions toward an agreement for the acquisition and interim trail use of the line. NSR filed a response consenting to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and agrees to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.¹ Under the circumstances, 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 period will be extended until February 16, 2010.

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

It is ordered:

1. Proponents' request to extend the NITU negotiating period for 180 days is granted.
2. The negotiating period under the NITU is extended to February 16, 2010.

¹ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary