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SERVICE DATE – DECEMBER 17, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 281X)

YADKIN RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN STANLY COUNTY, NC

Decided: December 16, 2008

Yadkin Railroad Company (Yadkin) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.14-mile line of railroad between milepost N 27.50 in North Albemarle and milepost N 31.64 in Albemarle, Stanly County, NC.¹ Notice of the exemption was served and published in the Federal Register on November 14, 2006 (November 2006 notice) (71 FR 66364-65). By decision and notice of interim trail use or abandonment (NITU) served on December 13, 2006, the proceeding was reopened and a 180-day period was authorized for the City of Albemarle, NC (City), to negotiate an interim trail use/rail banking agreement with Yadkin for an approximately 2-mile portion of the right-of-way involved in this proceeding, between milepost N 29.60 and milepost N 31.64.² The NITU negotiating period was extended to December 9, 2008, by decisions served on June 28, 2007, December 21, 2007, and June 4, 2008. The November 2006 notice stated that, if consummation had not been effected by Yadkin's filing of a notice of consummation by November 14, 2007, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. By decisions served on November 14, 2007 and June 4, 2008, the consummation deadline was extended until February 7, 2009.

On December 9, 2008, the City filed a request to extend the trail use negotiating period from December 9, 2008, to June 9, 2009.³ The City states that it continues to negotiate with

¹ The notice was jointly filed with Norfolk Southern Railway Company (NSR), as NSR sought to discontinue service over the same line in STB Docket No. AB-290 (Sub-No. 270X), Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Stanly County, NC.

² The decision and notice also made the exemption subject to salvage conditions and to a public use condition. The public use condition, which is limited by statute to 180 days, expired on June 12, 2007, and cannot be extended.

³ Although the request exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—Wendel-Alturas Line in Modoc and Lassen Counties, CA, Docket No. AB-12 (Sub-No. 184X) (STB served Sept. 1, 2005).

Yadkin. On December 9, 2008, Yadkin filed a letter stating that it consents to the extension request.

Additionally, in Yadkin's December 9, 2008 letter, Yadkin seeks extension of the consummation deadline until August 8, 2009, 60 days after the expiration date of the trail use negotiation period.⁴

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, the Board retains jurisdiction and the NITU negotiating period may be extended.⁵ 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). Accordingly, the NITU negotiating period will be extended until June 9, 2009, and the consummation notice filing deadline will be extended until August 8, 2009.

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

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU regarding the approximately 2-mile portion of the line described above, is extended through June 9, 2009.
3. Yadkin's request for an extension of time to consummate the abandonment is granted.
4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before August 8, 2009.
5. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary

⁴ Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

⁵ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C. 2d 152, 157-58 (1987).