

30254
DO

SERVICE DATE - MAY 19, 1999

SURFACE TRANSPORTATION BOARD¹

DECISION

STB Docket No. AB-290 (Sub-No. 157X)

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT EXEMPTION--
BETWEEN ALSTON AND PROSPERITY, SC

Decided: May 14, 1999

By decision and notice of interim trail use or abandonment (NITU) served March 1, 1995, a 180-day period was authorized for the Newberry County Soil and Water Conservation District of the State of South Carolina (District), and the Newberry County Council (County), to negotiate an interim trail use/rail banking agreement with Norfolk Southern Railway Company (NS) for its 11.0-mile line of railroad between milepost V-25.0 at Alston and milepost V-36.0 at Prosperity in Newberry County and the Town of Peak, SC. On August 1, 1995, the Palmetto Conservation Foundation (Foundation) filed a request for a NITU. By decision served August 30, 1995, the existing NITU negotiating period was extended to February 24, 1996, with the Foundation joining the District as a negotiating party. At the request of the Foundation, the negotiating period under the NITU was further extended by decisions served March 6, 1996, and August 22, 1996. The latest extension expired on February 18, 1997.

On May 10, 1999, the Foundation filed a request for a NITU and a public use condition for the 11.0-mile line of railroad. The Foundation states that it and NS are continuing to investigate options for trail use and to negotiate for interim trail use of the right-of-way. According to the Foundation, the right-of-way has been the subject of a thorough investigation of its suitability for a trail, and the negotiations have been lengthy because of the complexity of these investigations and the enormity of the task of connecting the right-of-way to a statewide trail. The Foundation also states that NS has maintained the right-of-way and has not proceeded with abandonment. On May

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. While the law pertinent to the matters addressed in this decision was the same prior to the ICCTA as it is after the ICCTA, citations in this decision are to the former section of the statute and regulations.

3, 1999, NS notified the Board that it joins the Foundation's request for an additional 180-day extension of the NITU and is in agreement with the planned use of the right-of-way.²

Because NS joins in the request for extension of the negotiation period, an extension will be granted. Where, as here, the carrier has not consummated that abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.³ 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), cert. denied, 117 S. Ct. 1082, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for 180 days from the service date of this decision.

Under former section 10906 [now section 10905], the Board may impose a public use condition for a maximum period of 180 days. Thus, the 180-day public use condition imposed in the March 1, 1995 decision expired on August 28, 1995, and may not be renewed. As a result, the request for extension of the public use condition must be denied.

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

It is ordered:

1. The request filed by the Foundation to extend the NITU period is granted.
2. The negotiating period under the NITU is extended to November 15, 1999.
3. The Foundation's request for an extension of the public use condition is denied.

² The official filing date of the Foundation's request was May 10, 1999, but NS clearly was aware of it earlier than that, as reflected by its response filed on May 3, 1999.

³ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).

STB Docket No. AB-290 (Sub-No. 157X)

4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary