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SERVICE DATE – NOVEMBER 13, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 265X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–  
IN CALHOUN COUNTY, AL

Decided: November 9, 2007

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 5.8-mile line of railroad between milepost 55.3-N, at Fort McClellan, and milepost 61.1-N, at Anniston, in Calhoun County, AL. Notice of the exemption was served and published in the Federal Register on February 2, 2006 (71 FR 5734-35). By decision and notice of interim trail use or abandonment (NITU) served on March 3, 2006, the proceeding was reopened and a 180-day period was authorized for the City of Anniston (the City) to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way involved in this proceeding.<sup>1</sup> The negotiating period was extended through October 25, 2007, by decisions served on August 31, 2006, February 27, 2007, and October 1, 2007. The October 1 decision also granted NSR’s request to further extend the consummation notice filing deadline to December 24, 2007.

On October 24, 2007, the City filed a request to further extend the negotiating period an additional 120 days (until February 22, 2008). The City states that the extension is necessary to receive final comments from the City’s consultants and to provide adequate time during the holiday period for the City Council to approve all actions necessary for the acquisition. NSR, in a letter filed on October 25, 2007, concurs with the request for an extension. NSR additionally requests an extension of the notice of consummation deadline until 60 days after the expiration of the extended NITU negotiating period (until April 22, 2008).

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an 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 64, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for an additional 120 days from October 25, 2007 (until February 22, 2008), and the deadline for NSR’s filing a notice of consummation will be extended until April 22, 2008.

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<sup>1</sup> The decision and notice also made the exemption subject to several environmental conditions and a public use condition. The public use condition expired on August 31, 2006, and cannot be extended.

This action 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 and NSR's request to extend the time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended for 120 days until February 22, 2008.
3. The authority to abandon must be exercised on or before April 22, 2008.
4. This decision is effective on the date of service.

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

Vernon A. Williams  
Secretary