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SERVICE DATE – MARCH 20, 2009

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: March 20, 2009

Norfolk Southern Railway Company (NSR) filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon 3.66 miles of rail line between mileposts TS 153.35 and TS 157.01 at Marion, in Grant County, IN. Notice of the filing was served and published in the Federal Register on October 30, 2007 (72 FR 61421). The exemption became effective on February 27, 2008.

By decision and notice of interim trail use or abandonment (NITU) served on January 28, 2008 (January 28 decision), 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 NSR for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The trail use negotiation period under the NITU was scheduled to expire on August 25, 2008.¹ By decision served on August 25, 2008, the Board extended the NITU negotiating period to February 21, 2009.

By letter filed on March 3, 2009, proponents have requested another 180-day extension of the NITU negotiating period, to which NSR has consented.

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.² 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 August 20, 2009.

¹ In addition to interim trail use, the January 28 decision also imposed a public use condition that expired on August 25, 2008, and may not be extended, and a consultation condition regarding the salvage of the line.

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

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 August 20, 2009.
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