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SERVICE DATE – AUGUST 20, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 257X)

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

Decided: August 19, 2008

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an 8.60-mile line of railroad between milepost RK-130.0, at Converse, and milepost RK-138.60, at Hartford City, in Blackford County, IN. Notice of the exemption was served and published in the Federal Register on January 19, 2005 (70 FR 3102-03).

By decision served on February 17, 2005 (February 2005 decision), the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA), and the exemption was made subject to five conditions. Three of the conditions were self-executing and, therefore, were not barriers to consummation by NSR of this abandonment. The remaining two conditions were removed in a decision served on June 25, 2008 (June 25 decision).

The February 2005 decision also imposed a 180-day notice of interim trail use or abandonment (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), for the Indiana Trails Fund, Inc. (ITF), to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way.¹ Several extensions were granted extending the NITU negotiating period until February 3, 2008. A request by ITF for a further extension was denied by decision served on February 25, 2008.

The Board's regulations at 49 CFR 1152.29(e)(2) require the filing of a notice of consummation within 1 year from the service date of the decision authorizing abandonment, but only if there are no legal or regulatory barriers to consummation. If, however, any legal or regulatory barrier to consummation exists at the end of the 1-year time period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier. Because the conditions and NITU described above constituted barriers to consummation, NSR would not have been required to consummate the abandonment until 60 days after their removal and expiration, respectively. This would result in a consummation date of August 22, 2008 (60 days after the June 25 decision removing the imposed conditions).

¹ In addition, a 180-day public use condition was imposed, which expired on August 17, 2005.

However, 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. By letter filed on August 11, 2008, and amended on August 12, 2008, NSR requests an extension of time from August 22, 2008, until August 22, 2009, to consummate the abandonment. NSR indicates that some of the property is not owned in fee and salvage activities are ongoing. NSR has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation in this proceeding. Accordingly, the request will be granted.

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

It is ordered:

1. NSR's request for an extension of time to consummate the abandonment is granted.
2. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before August 22, 2009.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary