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SERVICE DATE – SEPTEMBER 12, 2007

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: September 7, 2007

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 and notice of interim trail use or abandonment (NITU) served on February 17, 2005, the proceeding was reopened and a 180-day period was authorized for the Indiana Trails Fund, Inc. (ITF), to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way in this proceeding.<sup>1</sup> The negotiating period under the NITU was further extended until August 7, 2007, by decisions served on September 19, 2005, April 17, 2006, August 17, 2006, and February 20, 2007.

By letter filed on August 15, 2007, ITF requests a 180-day extension of the NITU negotiating period. ITF indicates that ITF and NSR have been negotiating, but have been unable to complete negotiations. In a letter filed on August 20, 2007, NSR states that it has not consummated the abandonment and that it consents to the extension.

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 by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>2</sup> 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). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails

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<sup>1</sup> The decision and notice also made the exemption subject to several environmental conditions, which remain in effect, and a public use condition, which expired on August 17, 2005, and may not be extended.

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

System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended for a period of 180 days, from August 7, 2007, to February 3, 2008. Given the time that has elapsed since abandonment was authorized, the negotiation parties are urged to conclude their negotiations so that further extensions are not necessary.

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 to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to February 3, 2008.
3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary