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SERVICE DATE – OCTOBER 18, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 267X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–
IN KANAWHA COUNTY, WV

Decided: October 17, 2007

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 12.22-mile line of railroad between milepost TP 14.69, at Blue Creek, and milepost TP 26.91, at Acup (Sanderson), in Kanawha County, WV. Notice of the exemption was served and published in the Federal Register on August 15, 2006 (71 FR 46976).¹ By decision and notice of interim trail use or abandonment (NITU) served on November 14, 2006, the proceeding was reopened and a 180-day period was authorized for the Elk River Rails-to-Trails Foundation, Inc. (Elk River) to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way involved in this proceeding.² By decision served on March 30, 2007, the negotiating period under the NITU was extended until September 13, 2007, and the deadline for filing a notice of consummation was extended until November 12, 2007.

By letter filed on September 11, 2007, Elk River requests an extension of the negotiating period from September 13, 2007, to March 13, 2008.³ Elk River states that an extension of time is necessary to finalize negotiations. By letter filed on September 12, 2007, NSR concurs with the request to extend the NITU. Additionally, NSR requests an extension of the notice of consummation deadline until 60 days after the expiration of the extended NITU negotiating period (until May 12, 2008).

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

¹ By decision served on September 13, 2006, the exemption was made subject to two environmental conditions and a historic condition.

² The decision and notice also made the exemption subject to a public use condition, which expired on March 13, 2007, and cannot be extended.

³ Although the request exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company–Abandonment Exemption–Wendel-Alturas Line in Modoc and Lassen Counties, CA, Docket No. AB-12 (Sub-No. 184X (STB served Sept. 1, 2005)).

be extended.⁴ 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). Accordingly, the NITU negotiating period will be extended until March 13, 2008, and the deadline for filing a notice of consummation will be extended until May 12, 2008.

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

It is ordered:

1. Elk River's request to extend the NITU negotiating period and NSR's request to extend the time to exercise the abandonment authority is granted.
2. The negotiating period under the NITU is extended until March 13, 2008.
3. The authority to abandon must be exercised on or before May 12, 2008.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

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