

SERVICE DATE - APRIL 6, 2004

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-290 (Sub-No. 168X)

NORFOLK AND WESTERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—BETWEEN KOKOMO AND ROCHESTER IN HOWARD, MIAMI, AND
FULTON COUNTIES, IN

Decided: April 5, 2004

By decision and notice of interim trail use or abandonment (NITU) served on May 14, 1996,¹ the Board granted Norfolk and Western Railway Company (N&W) and Central Railroad Company of Indianapolis (CERA) an exemption under former 49 U.S.C. 10505 from the prior approval requirements of former 49 U.S.C. 10903-04 for Norfolk Southern Railway Company (NSR)² to abandon 38.4 miles of rail line between milepost I-57.2 at or near Kokomo and milepost I-95.6 at or near Rochester, in Howard, Miami, and Fulton Counties, IN,³ and for CERA to discontinue service over approximately 51.4 miles of rail line between milepost I-57.2 and milepost I-108.6 at or near Argos, in Howard, Miami, Fulton, and Marshall Counties, IN. The Hoosier Rails-To-Trails Council, Inc.'s and Indiana Trails Fund, Inc.'s (ITF) request for the issuance of a NITU under 16 U.S.C. 1247(d) and 49 CFR 1152.29 for 38.4 miles of the line segment to be abandoned was authorized only for the line segment between milepost I-57.2 at or near Kokomo and milepost I-74.2 at Peru. The Board stated that, because the abandonment process as to the segment of the line between milepost I-74.2 and milepost I-95.6 could not be completed until IHRC's discontinuance of its trackage rights was authorized, it was not appropriate for the Board to issue a NITU for that portion of the line at that time. The Board further stated that, to facilitate its action on the request for trail use, NSR must inform the trail

¹ The May 14 decision and notice also embraced Docket No. AB-289 (Sub-No. 3X), Central Railroad Company of Indianapolis—Discontinuance of Service Exemption—Between Kokomo and Argos in Howard, Miami, Fulton, and Marshall Counties, IN.

² Effective September 1, 1998, NSR, through merger, became the successor to N&W. See Norfolk Southern Railway Company—Merger Exemption—Norfolk and Western Railway Company, STB Finance Docket No. 33648 (STB served Aug. 31, 1998).

³ Indiana Hi-Rail Corporation (IHRC) had trackage rights over a 21.4-mile segment of the line between Peru (milepost I-74.2) and Rochester. IHRC had been operating as a Chapter 11 debtor under the jurisdiction of the United States Bankruptcy Court for the Southern District of Indiana. IHRC filed its bankruptcy petition in In Re: Sagamore National Corporation and Indiana Hi-Rail Corporation, Case No. IP94-08502-RLB-11.

user if and when IHRC's trackage rights were discontinued. The Board reserved jurisdiction to impose a trail use condition if an appropriate request were made following IHRC's discontinuance. Subsequently, NSR notified the trail user of the discontinuance of the trackage rights, did not consummate the abandonment, except for a short segment of the line between I-74.2 and I-75.5, and negotiated a trail use agreement with ITF. NSR conveyed 34.2 miles of the line to ITF by three deeds dated January 21, 1999.

By decision and notice served on March 10, 2004, at the request of ITF, a NITU was issued for the portion of the line between milepost I-75.5 near Peru and milepost I-95.6 at or near Rochester.

On March 30, 2004, William C. Friend, Steven Furnivall, and Linda Schanlaub (referred to as petitioners) filed a petition for reconsideration of the Board's March 10, 2004 decision and notice. Petitioners request an extension for an additional 20 days (from March 30, 2004) to submit evidence and/or arguments on the issues presented in its petition, and on any additional issues that may prove relevant to the matter on which reconsideration is sought. Petitioners state that they learned of the Board's decision on March 25, 2004, and have included in their petition for reconsideration only such information as they have been able to substantiate with evidence. The request for an extension of time to file supplemental materials is reasonable and will be granted.

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

It is ordered:

1. The date for petitioners to file supplemental materials is extended to April 19, 2004.
2. Any reply to the petition for reconsideration, as supplemented, will be due by May 10, 2004.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary