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SERVICE DATE – AUGUST 31, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 238X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN BUCHANAN COUNTY, VA

Decided: August 30, 2005

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.0-mile line of railroad between milepost BH-0.0 at Bull Creek and milepost BH-4.0 at Harman, in Buchanan County, VA. Notice of the exemption was served and published in the Federal Register on September 9, 2003 (68 FR 53217).

By decision and notice of interim trail use or abandonment (NITU) served on September 3, 2004, the proceeding was reopened and a 180-day period was authorized for the Buchanan County Board of Supervisors (County) to negotiate an interim trail use/rail banking agreement with NSR for the subject line, under 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 March 2, 2005, but was extended to August 29, 2005, by decision served May 11, 2005. The May 11, 2005 decision also extended the deadline for NSR to file its notice of consummation until October 28, 2005.

In a request filed on August 24, 2005, the County sought an extension of the negotiating period for 180 days, until February 28, 2006.¹ The County states that it and NSR are continuing negotiations. In a facsimile received on August 29, 2005, NSR consented to the County's extension request. Additionally, NSR requested an extension of the consummation notice filing deadline until April 29, 2006.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1966); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Because an extension of the consummation notice filing deadline and the NITU negotiating

¹ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., CSX Transportation, Inc.—Abandonment Exemption—in Jefferson County, AL, STB Docket No. AB-55 (Sub-No. 613X) (STB served Oct. 22, 2004).

period will promote the establishment of trail use and rail banking consistent with the Trails Act, the requested extensions will be granted. Accordingly, the NITU negotiating period will be extended until February 28, 2006, and the consummation notice filing deadline will be extended until April 29, 2006.

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

It is ordered:

1. The County's request to extend the NITU negotiating period and NSR's request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended to February 28, 2006.
3. The authority to abandon must be exercised on or before April 29, 2006.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary