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SERVICE DATE – OCTOBER 1, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 265X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–
IN CALHOUN COUNTY, AL

Decided: September 28, 2007

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 5.8-mile line of railroad between milepost 55.3-N, at Fort McClellan, and milepost 61.1-N, at Anniston, in Calhoun County, AL. Notice of the exemption was served and published in the Federal Register on February 2, 2006 (71 FR 5734-35). By decision and notice of interim trail use or abandonment (NITU) served on March 3, 2006, the proceeding was reopened and a 180-day period was authorized for the City of Anniston (the City) to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way involved in this proceeding.¹ The negotiating period was extended through August 26, 2007, by decisions served on August 31, 2006, and February 27, 2007. The February 27 decision also granted NSR's request to further extend the consummation notice filing deadline to October 25, 2007.

On August 24, 2007, the City filed a request to further extend the negotiating period an additional 60 days (until October 25, 2007). The City states that significant strides have been made in recent negotiations. The City anticipates that the parties are within 60 days of consummating an agreement. NSR, in a letter filed on August 24, 2007, concurs with the request for an extension. NSR additionally requests an extension of the notice of consummation deadline until 60 days after the expiration of the extended NITU negotiating period (until December 24, 2007).

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. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 64, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for an additional 60 days from August 26, 2007 (until October 25, 2007), and the deadline for NSR's filing a notice of consummation will be extended until December 24, 2007.

¹ The decision and notice also made the exemption subject to several environmental conditions and a public use condition. The public use condition expired on August 31, 2006, and cannot be extended.

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

It is ordered:

1. The City's request to extend the NITU negotiating period and NSR's request to extend the time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended for 60 days until October 25, 2007.
3. The authority to abandon must be exercised on or before December 24, 2007.
4. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary