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SERVICE DATE - MAY 11, 2005

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: May 10, 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. The September 3, 2004 decision also denied the County's request for a public use condition and extended the deadline for NSR to file its notice of consummation until May 1, 2005.

In a request filed on May 3, 2005, and revised by facsimile received on May 9, 2005, the County sought an extension of the negotiating period for 180 days, until August 29, 2005. In a facsimile received on April 29, 2005, NSR consented to the County's proposed request for an extension. Additionally, NSR requested an extension of the consummation notice filing deadline until October 28, 2005.¹

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated the 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 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 period will promote the establishment of trail use and rail banking consistent with the Trails Act,

¹ Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

the requested extensions will be granted. Accordingly, the NITU negotiating period will be extended to August 29, 2005, and the consummation notice filing deadline will be extended to October 28, 2005.

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 August 29, 2005.
3. The authority to abandonment must be exercised on or before October 28, 2005.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary