

SERVICE DATE – JUNE 11, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 287X)

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

Decided: June 10, 2008

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 5.00-mile line of railroad between mileposts FD 90.20 and FD 95.20, in Lawrenceville, Brunswick County, VA. Notice of the exemption was served and published in the Federal Register on May 2, 2007 (72 FR 15755-56). The exemption became effective on June 1, 2007. In the May 2007 notice, the Board stated that, if consummation had not been effected by NSR's filing of a notice of consummation by May 2, 2008, and there were no legal and regulatory barriers to consummation, the authority to abandon would automatically expire.

By decision and notice of interim trail use or abandonment (NITU) served on May 31, 2007, the proceeding was reopened and a 180-day period was authorized for Roanoke River Rails-to-Trails, Inc. (Roanoke), to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The decision also imposed a condition requiring NSR to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places (generally, 50 years old or older) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).¹ By decision served on December 17, 2007, the NITU negotiating period was extended to May 26, 2008, and the historic preservation condition was removed.

By letter filed on April 22, 2008, NSR indicated that the segment of the line between mileposts FD 90.20 and FD 92.40 will be reclassified as industrial lead track, with no salvage of tracks or materials. It also noted that the segment between FD 92.40 and FD 95.20 remained subject to trail use negotiations. By decision served May 2, 2008, the Board extended until May 2, 2009, the due date for NSR to file a consummation notice in this proceeding.

By letter filed on May 27, 2008, Roanoke requests an extension of the NITU negotiating period until November 21, 2008, for the segment between mileposts FD 92.40 and FD 95.20.

¹ The May 31 decision also imposed a public use condition, which expired on November 28, 2007.

Roanoke states that it and NSR have advanced their negotiations for acquisition of the right-of-way as a recreational trail, but that additional time is still needed to complete the contract. NSR states that it consents to the requested extension of the negotiating period to November 21, 2008.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended.² 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 November 21, 2008.

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

It is ordered:

1. Roanoke's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until November 21, 2008.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary

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