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SERVICE DATE – AUGUST 17, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 257X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
BLACKFORD COUNTY, IN

Decided: August 15, 2006

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an 8.60-mile line of railroad between milepost RK-130.0 at Converse, and milepost RK-138.60 at Hartford City, in Blackford County, IN. Notice of the exemption was served and published in the Federal Register on January 19, 2005 (70 FR 3102-03).

By decision and notice of interim trail use or abandonment (NITU) served on February 17, 2005, the proceeding was reopened and a 180-day period was authorized for the Indiana Trails Fund, Inc. (ITF), to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way in this proceeding.¹ The NITU negotiating period was extended by decisions served on September 19, 2005, and April 17, 2006. The latest extension expired on August 12, 2006.

By letter dated August 10, 2006, and filed on August 11, 2006, ITF requests a 180-day extension of the NITU negotiating period. ITF indicates that ITF and NSR have been negotiating, but have been unable to complete negotiations. In a letter filed on August 10, 2006, NSR indicated that it had not consummated the abandonment and that it consents to the 180-day extension.

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 to February 8, 2007.

¹ The decision and notice also made the exemption subject to a public use condition and several environmental conditions. The public use condition expired on August 17, 2005.

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

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

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to February 8, 2007.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary