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SERVICE DATE – SEPTEMBER 19, 2005

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: September 16, 2005

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 expired on August 17, 2005.

By facsimile filed on September 9, 2005, ITF requests a 180-day extension of the NITU negotiating period. ITF indicates that ITF and NSR are negotiating in good faith towards the consummation of an agreement. By letter filed on September 9, 2005, NSR indicates that it has not consummated the abandonment and that it consents to the request to extend the NITU negotiating period.

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), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to February 13, 2006.

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 13, 2006.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary