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SEC

SERVICE DATE- SEPTEMBER 24, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 204X)

NORFOLK SOUTHERN RAILWAY COMPANY--ABANDONMENT  
EXEMPTION--IN MECKLENBURG COUNTY, NC

Decided: September 23, 1999

In a decision and notice of interim trail use or abandonment (NITU) served on April 7, 1999, a 180-day period was authorized for the City of Charlotte (City) to negotiate an interim trail use/rail banking agreement with Norfolk Southern Railway Company (NS) for 2.87 miles of NS's line of railroad between milepost R-0.13 and milepost R-3.0 in Charlotte, Mecklenburg County, NC.<sup>1</sup> The trail use negotiating period is scheduled to expire on October 5, 1999.<sup>2</sup> Notwithstanding the NITU that remained in effect, on September 7, 1999, NS filed a one-sentence letter stating simply that abandonment of the line "was consummated on April 29, 1999." Because the trail use condition imposed in this proceeding is a regulatory barrier to consummation (*see* 49 CFR 1152.29(e)(2)), NS's letter cannot provide valid notice that this line has been fully abandoned. Accordingly, the letter submitted as a notice of consummation will be rejected.

The Board's regulations adopted in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), include a notice of consummation requirement at 49 CFR 1152.29(e)(2), which is designed to provide clear evidence of when an authorized abandonment has been consummated and thus is designed to avoid litigation over whether or not a line has been abandoned. Section 1152.29(e)(2) requires that:

A railroad that receives authority from the Board to abandon a line (in a regulated abandonment proceeding under 49 U.S.C. 10903, or by individual or class exemption issued under 49 U.S.C. 10502) shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice

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<sup>1</sup> Notice of the exemption was served and published in the Federal Register on March 9, 1999 (64 FR 11530-31). On March 16, 1999, the City requested a NITU. By reply filed March 18, 1999, NS indicated its willingness to negotiate with the City for interim trail use.

<sup>2</sup> The April 7 decision also imposed an environmental condition that required NS to consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any of the five geodetic markers identified on the line.

shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement that the railroad has consummated, or fully exercised, the abandonment authority on a certain date. The notice shall be filed within 1 year of the service date of the decision permitting the abandonment (assuming that the railroad intends to consummate the abandonment). Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions, including Trails Act conditions). . . .

If NS wishes to abandon the line prior to the October 5, 1999 expiration of the trail use negotiation period, it must advise the Board that it is no longer willing to negotiate with the City for possible trail use and request termination of the trail use condition.

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

It is ordered:

1. The notice of consummation filed on September 7, 1999, is rejected.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary