

38314
DO

SERVICE DATE – SEPTEMBER 10, 2007

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: September 7, 2007

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, but was extended to August 23, 2007, by decisions served on May 11, 2005, August 31, 2005, March 1, 2006, August 28, 2006, and February 23, 2007. The February 23, 2007 decision also extended the deadline for NSR to file its notice of consummation until October 22, 2007.

In a facsimile received on August 17, 2007, the County seeks an extension of the negotiating period for 30 days, until September 21, 2007.¹ The County states that, while it and NSR have finally reached an agreement, the necessary documents to memorialize the agreement still need to be prepared, approved and signed. In a facsimile received on August 21, 2007, NSR states that it consents to the County's request for an extension.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated 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). Accordingly, the NITU negotiating period will be extended until September 22, 2007.

¹ Because the NITU expires on August 23, 2007, a 30-day extension would run until September 22, 2007.

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 is granted.
2. The negotiating period under the NITU is extended to September 22, 2007.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary