

SURFACE TRANSPORTATION BOARD¹

DECISION

Docket No. AB-290 (Sub-No. 169X)

NORFOLK AND WESTERN RAILWAY COMPANY--ABANDONMENT
EXEMPTION--BETWEEN FERGUSON JUNCTION AND GLEN ECHO, MO

Decided: April 23, 1997

A Notice of Interim Trail Use or Abandonment (NITU) was served on May 4, 1995, establishing a 180-day period for Gateway Trailnet, Inc. (Gateway), to negotiate an interim trail use/rail banking agreement with Norfolk and Western Railway Company (NW) for the right-of-way involved in this proceeding. The negotiation period under the NITU was extended three times by decisions served on October 27, 1995, May 1, 1996, and October 25, 1996. The latest extension will expire on April 25, 1997.²

By letter filed April 21, 1997, Gateway filed a request to extend the NITU negotiation period for an additional 180 days. Gateway states that it is continuing to negotiate with NW for an interim trail use/rail banking agreement. By letter filed April 22, 1997, NW advised that it has not consummated the abandonment and that it consents to the extension request.

Because NW consents to the request for extension of the negotiating period and confirms that it has not consummated the abandonment, an extension will be granted until October 22, 1997.³ This extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The purpose of the Trails Act is to preserve rail corridors for possible reactivation of rail service by permitting and encouraging their interim use as recreational trails. See *Policy Statement on Rails to Trails Conversions*, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990).

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

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) Of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903 and 16 U.S.C. 1247(d). Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

² NW filed a notice of exemption under 49 CFR 1152 Subpart F--*Exempt Abandonments* to abandon its 2.56-mile line of railroad between milepost UD-9.94 at Glen Echo and milepost UD-12.50 at Ferguson Junction in St. Louis County, MO. A notice of the exemption was served and published in the *Federal Register* on April 5, 1995 (60 FR 17367-68).

³ Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiation period and is willing to continue trail use negotiations, the Board retains jurisdiction to extend the *NITU negotiation period*. See *Rail Abandonments--Supplemental Trails Act Procedures*, 4 I.C.C.2d 152, 157-58 (1987); *Missouri Pacific Railroad Company--Abandonment* in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and , *St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX*, Docket No. AB-39 (Sub-No. 12) (ICC served Mar. 27, 1992).

It is ordered:

1. The negotiating period under the NITU is extended to October 22, 1997.
2. The decision is effective on its service date.

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

Vernon A. Williams
Secretary