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SERVICE DATE – JULY 18, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN ANDERSON AND WOODFORD COUNTIES, KY

Decided: July 16, 2007

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its line of railroad between milepost 0.7-LL, at Lawrenceburg, and milepost 3.5-LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). Notice of the exemption was served and published in the Federal Register on December 27, 1999 (64 FR 72376). The exemption became effective on January 26, 2000.

By decision and notice of interim trail use or abandonment (NITU) served on December 19, 2006, Tyrone Bridge and Rail Company (TBRC) was granted an extension of time until June 17, 2007, to negotiate an interim trail use/rail banking agreement with NSR for the line. On June 25, 2007, the Board received TBRC's motion for an extension of the NITU negotiation period for an additional 180 days. TBRC also requests that the Board impose a public use condition on the abandonment authorization. In response filed on June 27, 2007, NSR states that it has not consummated the abandonment and that it consents to the request to extend the trail use negotiation period. On July 6, 2007, Rails-to-Trails Conservancy filed a letter in support of TBRC's extension request.

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. 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 December 14, 2007. Given the time that has elapsed since abandonment authority was granted, however, the negotiation parties are urged to conclude their negotiations so that further extensions are not necessary.

TBRC's request for a public use condition, however, will be denied. Under 49 U.S.C. 10905 and 49 CFR 115228(b), the Board cannot impose a public use condition

beyond a 180-day period after the effective date of the decision approving the abandonment (here January 26, 2000). That period ended on July 24, 2000.¹

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

It is ordered:

1. TBRC's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended through December 14, 2007.
3. TBRC's request for a public use condition is denied.
4. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary

¹ See Rail Abandonments—Public Use Conditions—Revisions, 8 I.C.C.2d 392 (1992).