

Voting Conference, May 3, 2005

Statement of Brian O'Boyle
Staff Attorney, STB Office of Proceedings

Norfolk & Western Railway Company
– Abandonment Exemption –
Between Kokomo and Rochester in Howard, Miami, and Fulton Counties, IN

STB Docket No. AB-290 (Sub-No. 168X)

Good morning Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

The draft decision before you involves a complicated series of facts regarding the rail banking of a formerly active rail line in Indiana.

The facts are as follows: In May 1996, the Board issued a decision authorizing the Norfolk & Western Railway Company, now Norfolk Southern Railway, or NSR, to abandon a line between Kokomo, IN, and Rochester, IN. As part of the decision, the Board also issued a notice of interim trail use, or NITU, for the southern segment of the line to the Indiana Trails Fund, or ITF. ITF had also requested a NITU for the northern segment of the line, but NSR still had a trackage rights agreement with another carrier—one that was in a bankruptcy court proceeding—over the northern segment. The Board found that a NITU for the northern segment could not be issued until the trackage rights agreement was dissolved by the bankruptcy court.

In December 1997, the trackage rights agreement was dissolved by the bankruptcy court. However, ITF neglected to return to the Board for a NITU for the northern segment. In August

1998, NSR and ITF entered into a trail use agreement for both the southern segment (for which a NITU had been issued) and the northern segment (for which no NITU had been issued).

In February 2004, ITF, realizing it had never obtained a NITU for the northern segment, filed a request with the Board. The Board, finding that NSR had never consummated abandonment of the northern segment and that ITF was a qualified trail sponsor, issued the NITU in March 2004.

Soon after, petitions for reconsideration were filed by landowners who reside adjacent to the former rail line. In these petitions, the landowners challenge whether the northern and southern segments of the former rail line were properly rail banked. Specifically, the petitioners assert that the Board should not have granted the March 2004 NITU for the northern segment because NSR consummated abandonment of this segment, and because the segment was severed from the interstate rail network. The petitioners also assert that the southern segment should no longer be rail banked because it too is now severed from the interstate rail network. Finally, the petitioners assert that the NITUs for both the northern and southern segments should be revoked because ITF is an unfit trail sponsor because it has not properly maintained the trails.

The draft decision denies the landowners' petitions.

Addressing the northern segment first, the draft decision finds that the record shows that NSR did not consummate abandonment of this segment. Rather, the evidence shows that NSR intended from the outset of this proceeding to rail bank the northern segment and that its intent

never changed. The draft decision also finds that the northern segment has not been severed from the interstate rail network, as it is still connected to an active rail line at one end. Therefore, the northern segment was still within the Board's jurisdiction when it issued the March 2004 NITU.

Regarding the petitioners' claims pertaining to the southern segment, the draft decision finds that it too is still within the Board's jurisdiction because it is also still connected to the interstate rail network. Although we agree with the petitioners that one small portion of the southern segment has been abandoned at one end, there is clearly a connection at the other end.

Finally, the draft decision finds that the petitioners' claims that ITF is an unfit trail sponsor should be addressed by the Indiana state courts. Should an Indiana state court determine that ITF has in fact failed to properly manage the trail, then the Board would be available to consider whether the NITUs should be revoked.

We would be happy to answer any questions you may have.