

SERVICE DATE – JANUARY 24, 2008

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: January 23, 2008

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. Notice of the exemption was served and published in the Federal Register on December 27, 1999 (64 FR 72376). By decision and notice of interim trail use or abandonment served on February 7, 2001, a 180-day period was authorized for the Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement with NSR for the 2.8-mile line of railroad. At the request of RTC and Tyrone Bridge and Rail Company (TBRC), the Board vacated the existing NITU and issued a second NITU on May 28, 2004, authorizing TBRC to negotiate with NSR and to serve as interim trail manager for the rail line. The negotiation period was extended several times; the latest extension expired on December 14, 2007.

In a joint motion filed December 14, 2007, Anderson County Fiscal Court and Lawrenceburg City Council (collectively, Proponents), new negotiating parties, filed a request for an extension of the NITU negotiating period for an additional 180 days. Proponents also request that the Board impose a public use condition on the abandonment authorization.¹ Proponents submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29 and acknowledged that the use of the right-of-way as a trail is subject to possible future reconstruction and reactivation of the right-of-way for rail service.² In a response filed on December 19, 2007, NSR states that it has not consummated the abandonment and that it consents to the requested extension of the trail use negotiation period.

¹ Proponents state that the Lawrenceburg City Council and the Anderson County Fiscal Court have agreed to take over the rail banking extension request. Proponents also state that RTC and TBRC continue to support the rail banking request.

² On January 10, 2008, Proponents filed the appropriate statement that the Lawrenceburg City Council and the Anderson County Fiscal Court are willing to assume the financial responsibility for the right-of-way.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way and the carrier is willing to enter into negotiations. Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to negotiate with Proponents for trail use over the right-of-way, the Board retains jurisdiction and the NITU negotiating period may be extended.³ Under the circumstances, the requested 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 for an additional 180 days from the service date of this decision or until July 22, 2008. If no agreement is reached within that time period, NSR may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2). Given the time that has elapsed since abandonment was authorized, the parties are urged to conclude their negotiations so that further extensions will not be necessary.

Proponents' request for a public use condition, however, will be denied. Under 49 U.S.C. 10905 and 49 CFR 1152.28(b), the Board cannot impose a public use condition beyond the 180-day period after the effective date of the decision approving the abandonment (here January 26, 2000). That period ended on July 24, 2000.⁴

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

It is ordered:

1. This proceeding is reopened.
2. The NITU served on May 28, 2004, is vacated.
3. A replacement NITU designating Proponents as the trail managers to negotiate a trail use agreement with NSR is issued effective on the service date of this decision, with the trail use negotiating period extended to July 22, 2008.
4. The new trail users are required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the users are immune from liability, in which case they need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new trail users continuing to meet the financial obligations for the right-of-way.

³ See Rail Abandonments – Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

⁴ See Rail Abandonments—Public Use Conditions—Revisions, 8 I.C.C.2d 392 (1992).

6. If a trail use agreement is reached and subsequently the new trail users intend to terminate trail use, they must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by July 22, 2008, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the line.

8. The request for a public use condition is denied.

9. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary