

BAKER & MILLER PLLC

246992

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

ENTERED
Office of Proceedings
January 29, 2019
Part of
Public Record

Crystal M. Zorbaugh

(202) 663-7831 (Direct Dial)
E-Mail: czorbaugh@bakerandmiller.com

January 29, 2019

BY E-FILING

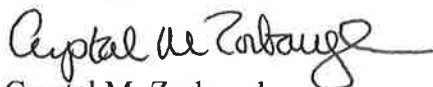
Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Norfolk Southern Railway Company – Abandonment, Discontinuance of Trackage Rights and Discontinuance of Service - in Cleveland and Rutherford Counties, NC, and Cherokee County, SC, AB-290 (Sub-327X)

Dear Ms. Brown:

Per letter dated January 21, 2019 (see attached), the City of Shelby, North Carolina ("City") requested that the Board extend the period of time allowed for the parties to negotiate interim trail use/rail banking ("NITU") in the above-captioned proceeding.¹ Norfolk Southern Railway Company ("NSR") hereby notifies the Board that it has not consummated its abandonment authority and remains willing to continue to engage in negotiations toward a possible NITU arrangement for the subject rail lines, which extend from milepost SB 144.55 to milepost SB 154.50 and from milepost SB 158.10 to SB 160.00 (the "Line"). Accordingly, NSR hereby consents to the City's request for a 180-day extension of the negotiation period towards a NITU for the Line.

Sincerely,



Crystal M. Zorbaugh

An Attorney for Norfolk Southern Railway Company

cc: All parties of record
Greg Summy, Laura Hoag, Jackie Birge

¹ Per a stamp-decision served July 17, 2018, the NITU period would have expired on January 19, 2019. However, the recent government shutdown, which began on December 21, 2018, tolled all due dates. Per a director's decision served by the Board on January 28, 2019, in Filings Submitted Or Due To Be Submitted During The Partial Federal Government Shutdown, EP 751, all filings that were due during the shutdown are now due no later than February 4, 2019. As such, while the NITU period ended on January 21, 2019, this extension request is timely.

YELTON, FARFOUR & BRIDGES

ATTORNEYS AT LAW

SHELBY, NORTH CAROLINA

ROBERT W. YELTON¹
LESLIE A. FARFOUR, JR.²
R. JOHN BRIDGES

¹ Master of Law in Taxation

² Certified Mediator-Superior Ct & Family Law

Sender's email:

bob@shelbylawyers.com

MAILING ADDRESS:

PO Box 1329

Shelby, NC 28151

STREET ADDRESS:

211 S. Washington St.

Shelby, NC 28150

Telephone: (704) 482-7718

Facsimile: (704) 482-6747

www.shelbylawyers.com

January 21, 2019

VIA: E-Filing at <https://www.stb.gov/stb/efilings.nsf>
and Certified First Class U.S. Mail, Return Receipt Requested

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Norfolk Southern Railway Company – Abandonment, Discontinuance of Trackage Rights and
Discontinuance of Service – in Cleveland and Rutherford Counties, N.C., and Cherokee County,
S.C.
STB Docket No. AB-290 (Sub-No. 327X)

Dear Ms. Brown:

The City of Shelby (the “City”), a North Carolina municipal corporation, hereby petitions the Surface Transportation Board (the “Board”) for an order extending the time period for reaching an agreement for interim trail use/rail banking in the above-referenced docket by 180 days, to and including July 22, 2019.¹

On June 16, 2015, Norfolk Southern Railway Company (“NSR”) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F to abandon and discontinue trackage rights and services as follows: (1) NSR will abandon approximately 11.85 miles of rail line in Cleveland County, N.C., consisting of two line segments, one of which is located between milepost SB 144.55 and milepost SB 154.50 and the other between milepost SB 158.10 and milepost SB 160.00 (collectively, the “Line”); (2) NSR will discontinue trackage rights granted to it by CSX Transportation, Inc. (“CSXT”) over approximately 22.8 miles of CSXT track, located in Cleveland and Rutherford Counties, N.C., between milepost SF 384.6 and milepost SF 407.4; and (3) NSR will discontinue service over approximately 3.20 miles of rail line in Cherokee County, S.C., extending between milepost SB 144.55 and milepost SB 141.35.

On June 18, 2015, the City filed a request for the issuance of a notice of interim trail use (“NIRU”) to negotiate with NSR for acquisition of the Line for use as a trail under the National Trails System Act (the “Trails Act”), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. In a response filed on June 22,

¹ The current deadline to reach an agreement is January 21, 2019. One hundred eighty days from January 21, 2019, falls on Saturday, July 20, 2019. Consistent with 49 C.F.R. § 1104.7(a), the City requests that the Board extend the time period to Monday, July 22, 2019.

2015, NSR indicated its willingness to negotiate with the City for interim trail use and its support for the City's request.

On August 4, 2015, the Board issued its Decision and Notice of Interim Trail Use or Abandonment providing for a 180-day period concluding on January 31, 2016, for negotiations between the City and NSR to reach an agreement for interim trail use/rail banking.

Promptly after the issuance of the Decision, the City initiated negotiations with NSR regarding the City's desire to acquire the Line for trail use under the Trails Act. In connection with the negotiations, NSR ordered an appraisal for the Line. The appraisal was completed in the latter half of 2016. Since then, the parties have been engaged in communications regarding the appraisal and financial arrangements attendant to any proposed acquisition.

The City has previously sought (with the consent of NSR), and obtained, 180-day extensions of the negotiation period on December 4, 2015, June 1, 2016, December 20, 2016, May 23, 2017, January 3, 2018, and, most recently July 23, 2018. The last extension resulted in the current deadline of January 21, 2019.

Since the July, 2018, extension request, negotiations progressed to the point where the City made an offer to NSR. While NSR did not accept that offer, the parties continue to negotiate in good faith towards the development of mutually acceptable terms for the purchase of the Line by the City. If the parties reach an agreement on terms, a purchase agreement would need to be negotiated followed by a period of customary due diligence prior to the consummation of any transaction. It is anticipated that these activities will consume several more months at a minimum.

Accordingly, the City respectfully requests that the Board issue an order extending the negotiation period for an additional 180 days, to and including July 22, 2019.

The City, as a governmental entity, also respectfully requests a waiver of the Board's filing fees in accordance with 49 C.F.R. § 1002.2(e)(1). Should you have any questions, please do not hesitate to contact me.

By my signature below, I hereby certify that a copy of this letter request is being served on NSR, c/o William A. Mullins, Esq., Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., #300, Washington, DC 20037, WMullins@bakerandmiller.com, by electronic mail and by U.S. Mail, postage pre-paid, first class, on the same date it is being served on the Board.

Sincerely,

YELTON, FARFOUR & BRIDGES



Robert W. Yelton

RWY/dr