

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 247X)

NORFOLK SOUTHERN RAILWAY COMPANY-ABANDONMENT EXEMPTION-
IN MECKLENBURG COUNTY, NC

Decided: May 21, 2004

By decision served on April 9, 2004, the Board granted Norfolk Southern Railway Company (NSR) an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10903-05 to abandon a 1.95-mile segment at the end of its line of railroad known as the old R-Line, extending from Milepost old R-3.00 to Milepost old R-4.95, in Charlotte, Mecklenburg County, NC. The exemption was granted subject to environmental and standard employee protective conditions. Notice of the exemption was served and published in the Federal Register on January 12, 2004 (69 FR 1781). The exemption became effective on April 24, 2004.

The decision noted that NSR had sold the right-of-way to the City of Charlotte, NC (City), on December 11, 2003, and retained a continuing easement for rail freight service. NSR had indicated that, following abandonment, it intended to reclassify a portion of the segment between Milepost old R-3.80 and Milepost old R-4.95 as an industrial track, enabling it to continue serving C&T Refinery, the only active rail customer on the line. The abandonment and the sale of the right-of-way were to facilitate the City's plans to construct a light rail transit line over the right-of-way and contiguous property.

On May 14, 2004, the City late-filed¹ a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) for the 0.80-mile remaining portion of the segment between Milepost old R-3.00 and Milepost old R-3.80. The City indicates that it has negotiated and reached an agreement with NSR for an interim trail use and rail banking arrangement for the 0.80-mile portion of the line and requests that a NITU be

¹ The January 12, 2004 notice provided that trail use/rail banking requests were due by February 2, 2004. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894, 900 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the City's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company-Abandonment Exemption-In Stark County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

issued so that the parties can finalize the arrangement. The City submitted a statement of willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By letter filed on May 17, 2004, NSR responded that it has not consummated the abandonment and acknowledged that it has reached an agreement with the City for interim trail use and rail banking for the 0.80-mile portion of the line.

Trail use requests may be accepted as long as the Board retains jurisdiction over the involved right-of-way, and the carrier is willing to enter into negotiations.² Inasmuch as NSR has not consummated the abandonment and has reached an agreement with the City for trail use, a NITU will be issued with the trail use negotiation period running 180 days from the service date of this decision. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, NSR may fully abandon the subject portion of the line segment, provided that the conditions imposed in the decision served April 9, 2004, are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision 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. Upon reconsideration, the decision served on April 9, 2004, exempting the abandonment by NSR of the 0.80-mile portion of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth above for a period of 180 days from the service date of this decision and notice (until November 17, 2004), subject to the conditions imposed in the April 9, 2004 decision.
3. If an interim rail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal

² See Rail Abandonments-Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company-Exemption-Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company-Abandonment-in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

liability arising out of the transfer or use of (unless the user is immune from liability, in which case it 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.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by November 17, 2004, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the line.

7. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

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