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SERVICE DATE – SEPTEMBER 7, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 222X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN  
MERCER COUNTY, WV, AND TAZEWELL COUNTY, VA

Decided: September 3, 2004

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 1.9-mile line of railroad between milepost PO-0.0 at Bluestone, Mercer County, WV, and milepost PO-1.90 at Pocahontas, Tazewell County, VA. Notice of the exemption was served and published in the Federal Register on September 24, 2003 (68 FR 55297). The exemption became effective on October 24, 2003.<sup>1</sup>

By decision and notice of interim trail use or abandonment (NITU) served on February 19, 2004, the proceeding was reopened and the exemption was made subject to interim trail use/rail banking and a public use condition. A 180-day period from the effective date of the abandonment exemption (until April 21, 2004) was authorized to permit public use negotiations, and a 180-day period from the service date of the decision (until August 17, 2004) was authorized for Historic Pocahontas, Inc. (petitioner), to negotiate an interim trail use/rail banking agreement with NSR for the described line.

On August 30, 2004, petitioner filed a request to extend the NITU negotiating period for 180 days (until February 13, 2005). Petitioner states that it is working with NSR to secure a prompt closing date on the property, and is requesting an extension of the negotiating period in order to conclude acquisition of the right-of-way. NSR advised the Board that it consents to the extension request, that it has not consummated the abandonment, and that the parties are continuing negotiations and hope to complete an agreement within the next 6 months.

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<sup>1</sup> By decision served October 22, 2003, the exemption was made subject to the condition that, if NSR revises its abandonment plans to include salvaging activities, NSR shall consult with the U.S. Fish and Wildlife Service-Gloucester (USFWS-Gloucester) to determine what sediment and erosion control measures should be implemented during salvaging activities, and NSR shall report the results of any USFWS-Gloucester consultations to the Board's Section of Environmental Analysis.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an 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), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to February 13, 2005.

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

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended until February 13, 2005.
3. This decision is effective on its date of service.

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

Vernon A. Williams  
Secretary