

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 265X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–
IN CALHOUN COUNTY, AL

Decided: March 20, 2009

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 5.8-mile line of railroad between milepost 55.3-N, at Fort McClellan, and milepost 61.1-N, at Anniston, in Calhoun County, AL. Notice of the exemption was served and published in the Federal Register on February 2, 2006 (71 FR 5734-35). By decision and notice of interim trail use or abandonment (NITU) served on March 3, 2006 (March 2006 decision), the proceeding was reopened and a 180-day period was authorized for the City of Anniston (the City) to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way involved in this proceeding. At the request of the Board’s Section of Environmental Analysis (SEA), the exemption was made subject to environmental and public use conditions.¹ The negotiating period was extended through February 22, 2008, by decisions served on August 31, 2006, February 27, 2007, October 1, 2007, and November 13, 2007 (November 13 decision). The November 13 decision also granted NSR’s request to further extend the consummation notice filing deadline to April 22, 2008.

On February 27, 2008, NSR filed a notice of consummation.² On April 24, 2008, the City filed a request to extend the NITU negotiating period an additional 90 days. On February 19, 2009, the City filed another request seeking to extend the negotiating period an additional 180 days. NSR did not file a response to either of the City’s requests.

The Board’s regulations at 49 CFR 1152.29(e)(2) require the filing of a notice of consummation within 1 year from the service date of the decision authorizing abandonment. In the November 13 decision, the Board extended that date and stated that, if consummation had not

¹ The public use condition expired on August 31, 2006, and cannot be extended. The March 2006 decision imposed three environmental conditions, two of which related to salvage activities. The third condition pertained to historic preservation and the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. In a decision served on July 14, 2006, the historic preservation condition was removed. The remaining salvage conditions are self-executing and are not barriers to consummation.

² According to NSR, the notice of consummation was sent to the Alabama Public Service Commission and the Alabama Department of Transportation, pursuant to 49 CFR 1152.29(e)(2).

been effected by NSR's filing of a notice of consummation by April 22, 2008, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. NSR filed its consummation notice before the regulatory deadline. Therefore, NSR's notice of consummation will be accepted.

The City's requests to extend the NITU negotiating period will be rejected. Because we have accepted NSR's notice of consummation, the Board no longer retains the jurisdiction to grant an extension of the negotiating period.

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

It is ordered:

1. NSR's notice of consummation is accepted.
2. The City's requests to extend the NITU negotiating period are denied.
3. This decision is effective on the date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary