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SERVICE DATE - MARCH 15, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 206X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN POLK AND
STORY COUNTIES, IA

Decided: March 12, 2004

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 14.0-mile line of railroad, known as the Ankeny Subdivision, extending from milepost 10.7 near Ankeny to milepost 341.1 (Equation: $23.20 = 339.60$) near Slater, in Polk and Story Counties, IA. Notice of the exemption was served and published in the Federal Register on August 5, 2003 (68 FR 46264). By decision and notice of interim trail use or abandonment (NITU) served on September 3, 2003, the proceeding was reopened and a 180-day period was authorized for the Story and Polk County Conservation Boards and the Iowa Natural Heritage Foundation (collectively Commenters) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding.¹ The negotiating period under the NITU expired on March 2, 2004.

On March 3, 2004, Commenters filed a motion to extend the negotiating period until September 2, 2004. Commenters indicate that they have been negotiating with UP and have submitted requests to three grant programs for funding assistance to acquire the line. They state that the recommendation for funding will not be known until mid March, and, therefore, more time will be needed to finalize the trail use agreement. By facsimile filed on March 5, 2004, UP advises that it is willing to continue to negotiate with Commenters and supports the request to extend the negotiating period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances, further 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),

¹ The decision and notice also made the exemption subject to a historic preservation condition.

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

cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to September 2, 2004.³

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 NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to September 2, 2004.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary

³ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).