

39639
DO

SERVICE DATE – JANUARY 13, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 175X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN HAMILTON COUNTY, IA

Decided: January 12, 2009

On May 8, 2006, a decision and notice of interim trail use or abandonment (NITU) was served (May 8 decision), authorizing a 180-day period for the Iowa Trails Council (Council), on behalf of itself and the Hamilton County Conservation Board, to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company (UP), for its Ellsworth Industrial Lead, a 3.2-mile line of railroad, between milepost 0.0, near Jewell, and milepost 3.2, at Ellsworth, in Hamilton County, IA.¹ The negotiating period under the NITU was extended by several decisions, with the latest extension expiring on October 24, 2008.

On December 23, 2008, the Council filed a request to extend the NITU negotiating period until February 24, 2009. The Council states that additional time is needed to finalize trail use negotiations. On December 24, 2008, UP filed its response, stating that it has no objections to the Council's request to extend the negotiating period until February 24, 2009.

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, 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). Accordingly, the NITU negotiating period will be extended until February 24, 2009.

¹ The May 8 decision also noted that, by decision served on April 28, 2006 (April 28 decision), the proceeding had been reopened and made subject to a public use condition, an environmental condition, and a historic condition. The public use condition expired on October 25, 2006, and may not be extended. The section 106 historic preservation condition was removed by decision served on August 7, 2007. The environmental condition, imposed in the April 28 decision, remains in effect.

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

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

It is ordered:

1. The Council's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until February 24, 2009.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary