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SERVICE DATE - FEBRUARY 11, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-493 (Sub-No. 7X)

TRACK TECH, INC.--ABANDONMENT EXEMPTION--IN ADAIR AND
UNION COUNTIES, IA

Decided: February 10, 1999

By decision and notice of interim trail use or abandonment (NITU) served on July 2, 1998, a 180-day period was authorized for the Iowa Trails Council, Inc. (ITC), to negotiate an interim trail use/rail banking agreement with Track Tech, Inc. (Track Tech), for an 19.70-mile line of railroad between milepost 1.45 near Creston, and milepost 21.15 at the end of the line in or near Greenfield, in Adair and Union Counties, IA.¹ Thereafter, pursuant to the offer of financial (OFA) assistance provisions of 49 U.S.C. 10904 and 49 CFR 1152.27, Green Valley Chemical Company (Green Valley) was authorized to acquire the portion of the line between milepost 1.45 and milepost 5.45.² By decision served on September 21, 1998, the Board approved the purchase and dismissed the exemption with respect to the part of the line between milepost 1.45 and milepost 5.45. The NITU remained in effect for the remainder of the line between milepost 5.45 and milepost 21.15. The 180-day period under the NITU expired on December 29, 1998.

By letter dated December 30, 1998, and filed on January 8, 1999, ITC requests a 180-day extension of the NITU negotiating period.³ ITC states that additional time is needed to finalize negotiations with The Burlington Northern and Santa Fe Railway Company (BNSF) and Track Tech. According to ITC, negotiations have been complicated because BNSF owns the real estate underlying the track; negotiations for sale of the property subject to the OFA between Green Valley, Track Tech and BNSF took 2 months; and BNSF is considering proposals to sell its interest in the remainder of the property for other than rail use or public use. On February 2, 1999, ITC filed a letter it received from BNSF wherein BNSF indicates its agreement to a 90-day extension of the negotiating period.

Track Tech has not notified the Board whether it is willing to continue negotiations with

¹ Notice of the filing of the petition was published in the Federal Register on April 6, 1998 (63 FR 16859).

² See Track Tech, Inc.--Abandonment Exemption--In Adair and Union Counties, IA, STB Docket No. AB-493 (Sub-No. 7X) (STB served Aug. 17, 1998).

³ Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period, the Board's jurisdiction is not terminated. See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152,157-58 (1987).

ITC. Track Tech is the entity that has the common carrier obligation to provide service over the line and that has been granted the exemption to abandon the line. Because trail use is voluntary with the carrier,⁴ an extension of the negotiating period cannot be granted without Track Tech's consent. Accordingly, Track Tech must notify the Board within 10 days from the service date of this decision whether it agrees to an extension of the NITU negotiating period to continue trail use negotiations with ITC.

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

It is ordered:

1. Track Tech is directed to notify the Board within 10 days of the service date of this decision whether it agrees to an extension of the NITU negotiating period for the portion of the line between milepost 5.45 and milepost 21.15.
2. The decision is effective on its service date.

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

Vernon A. Williams
Secretary

⁴ See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).