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SERVICE DATE – FEBRUARY 29, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 251X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT
EXEMPTION–IN DANE COUNTY, WI

Decided: February 28, 2008

By decision and notice of interim trail use or abandonment (NITU) served on May 31, 2005, a 180-day period was authorized for Wisconsin Department of Natural Resources (WisDNR) to negotiate an interim trail use/rail banking agreement under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), with Union Pacific Railroad Company (UP) for a 4.4-mile line of railroad, known as the Central Soya line, Harvard Subdivision, between milepost 85.5 in the City of Madison and milepost 89.9 in the City of Fitchburg, in Dane County, WI. The trail use negotiation period was scheduled to expire on November 28, 2005, but was subsequently extended by several decisions, with the latest extension expiring on February 16, 2008.¹

On February 14, 2008, Wisconsin Department of Transportation (WisDOT) filed a request on behalf of WisDNR for an additional 180-day extension of the negotiating period. WisDOT states that negotiations are currently continuing in good faith between the parties, but more time is needed to finalize negotiations. On February 21, 2008, UP filed its response stating that it is agreeable to a 90-day extension of the negotiation period under the NITU.

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. 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). An extension of the negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act.² Because the Trails Act permits only voluntary interim trail use, the Board cannot grant the extension request in the absence of UP's willingness to

¹ Notice of the exemption was served and published in the Federal Register on May 2, 2005 (70 FR 22758). The May 31, 2005 decision and notice also made the exemption subject to several environmental conditions.

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

negotiate regarding interim trail use/rail banking. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Here, UP has expressed its willingness to extend the negotiating period for only 90 days. Accordingly, the NITU negotiation period will be extended for an additional 90 days from February 16, 2008 (until May 16, 2008).

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

It is ordered:

1. WisDOT's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended to May 16, 2008.
3. The decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary