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SERVICE DATE – MAY 18, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 229X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN ELLIS
COUNTY, TX

Decided: May 15, 2007

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 4.57-mile line of railroad known as the Waxahachie Industrial Lead extending from milepost 798.03, near Waxahachie, to milepost 802.60, near Nena, in Ellis County, TX. Notice of the exemption was served and published in the Federal Register on December 7, 2005 (70 FR 72876).¹

By decision served on January 5, 2006, the proceeding was reopened and the exemption was made subject to three environmental conditions, which remain in effect. By decision and notice of interim trail use or abandonment (NITU) served on February 1, 2006, the proceeding was reopened and a 180-day period was authorized for the City of Waxahachie, TX (the City), to negotiate an interim trail use/rail banking agreement with UP for the described line, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The trail use negotiating period under the NITU was extended by decisions served on July 28, 2006, October 27, 2006, December 21, 2006, and February 26, 2007. The latest extension expired on April 27, 2007.

On April 26, 2007, the City filed a request to extend the NITU negotiating period for an additional 90 days. The City states that the parties have reached an agreement but additional time is needed to complete the appraisal process. By letter filed on May 2, 2007, UP states that it is willing to continue to negotiate with the City and that it 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, 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). An extension of the NITU negotiating period will promote the establishment of

¹ The exemption became effective on January 6, 2006.

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

trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for an additional 90 days from April 27, 2007, until July 26, 2007.

This decision 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 July 26, 2007.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary