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SERVICE DATE – NOVEMBER 7, 2011

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 261)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—IN NEW MADRID,
SCOTT, AND STODDARD COUNTIES, MO.

Decided: November 4, 2011

In this decision, an extension is granted for negotiating a trail use/rail banking agreement.

By decision and certificate of interim trail use or abandonment (CITU) served on June 17, 2009 (June 2009 decision), the Board, under 49 U.S.C. § 10903, granted the abandonment application of Union Pacific Railroad Company (UP) for authority to abandon its Essex-to-Miner Line, from milepost 196.7 near Essex to milepost 216.27 near Miner, a distance of 19.57 miles, in New Madrid, Scott, and Stoddard Counties, Mo. The abandonment authority was granted subject to public use, environmental, and standard employee protective conditions, as well as a certificate of interim trail use or abandonment authorizing a 180-day period for the City of Sikeston (the City) to negotiate an interim trail use/rail banking agreement with UP. The negotiating period under the CITU was extended several times, most recently (in a decision served June 24, 2011) until September 5, 2011.

On September 1, 2011, the City filed a letter notifying the Board that it has been engaged in negotiations with UP regarding a trail use agreement but that, to date, those negotiations have not led to the completion of a final agreement. The City requests that the Board extend the negotiating period for an additional 182 days to permit the City and UP to continue their ongoing negotiations. The City states that it has conferred with UP and that UP concurs with the City's extension request.

In a response filed on September 6, 2011, UP states that it is willing to continue negotiating with the City for the requested 182 days, but only for the portion of the line between milepost 208.95 near Sikeston and the end of the line at milepost 216.27 near Miner. In the same filing, UP advised the Board that it is consummating abandonment of the portion of the line between milepost 203.0 and milepost 208.95 near Sikeston. See 49 C.F.R. § 1152.29(e)(2). According to UP, the remaining western portion of the line between milepost 196.7 near Essex and milepost 203.0 has potential for future industrial development that may require rail service. UP states that it therefore is foregoing consummation of the abandonment of that portion of the line, on which it already has discontinued service. See Notice of Discontinuance of Service submitted to the Board on January 25, 2010.

Under the National Trails System Act, 16 U.S.C. §1247(d) (Trails Act), interim trail use/rail banking is voluntary and consensual between the railroad and the trail user. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Because UP no longer consents to interim trail use/rail banking negotiations for the portion of the line between milepost 196.7 and milepost 208.95, the CITU negotiating period for that portion of the line will not be extended.

UP consents to the requested CITU extension with respect to the portion of the line between milepost 208.95 and milepost 216.27. Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for a portion of the line and is willing to continue trail use negotiations for that portion of the line, the Board retains jurisdiction and the CITU negotiating period may be extended. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987). 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 Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the CITU negotiating period will be extended for only the portion of the line between milepost 208.95 near Sikeston and the end of the line at milepost 216.27 near Miner for 182 days, until March 5, 2012.

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

It is ordered:

1. This proceeding is reopened.
2. The negotiating period under the CITU is extended for the portion of the right-of-way between milepost 208.95 near Sikeston and the end of the line at milepost 216.27 near Miner for 182 days, until March 5, 2012.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.