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SERVICE DATE – SEPTEMBER 11, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 201X)

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

Decided: September 7, 2007

By decision and notice of interim trail use or abandonment (NITU) served on September 12, 2003, the Board granted the petition for exemption filed by Union Pacific Railroad Company (UP) for abandonment of a 7.84-mile line of railroad, in the western portion of the Bristow Subdivision, extending from milepost 318.66, near Hampton, to milepost 326.50, near Coulter, in Franklin County, IA. The exemption was subject to public use, environmental, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the Iowa Trails Council (Council), on behalf of the Franklin County Conservation Board, to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. The negotiating period was extended through August 22, 2007, by decisions served on March 26, 2004, September 23, 2004, March 4, 2005, September 13, 2005, February 24, 2006, September 13, 2006, and March 27, 2007.

By letter filed on August 16, 2007, Council requests an extension of the negotiating period for 180 days. Council states that an extension of time is necessary to finalize negotiations. In a response filed electronically on August 21, 2007, UP concurs in the request to extend the negotiating period, but only for 60 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.¹ 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). Accordingly, the NITU negotiating period will be extended for an additional 60 days from August 22, 2007 (until October 21, 2007).² Given the

¹ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

² Trail use/rail banking is voluntary and can be implemented only if an abandoning railroad agrees to negotiate an agreement. See section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). Therefore, the negotiating period may be extended only for the agreed term of 60 days.

length of time the parties have had to negotiate a trail use agreement, the parties are urged to conclude their negotiations so that further extensions are not necessary.

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 October 21, 2007.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary