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SERVICE DATE – NOVEMBER 13, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 213X)

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

Decided: November 9, 2007

By decision and notice of interim trail use or abandonment (NITU) served on October 25, 2004, the Board granted Union Pacific Railroad Company (UP) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Perry Subdivision, extending from milepost 296.8 near Waukee, IA, to milepost 275.9 (Equation milepost 275.9 = 361.8) near Perry, IA, and from milepost 361.8 to milepost 369.0 near Dawson, IA, a total distance of 28.1 miles, in Dallas County, IA. The exemption was granted subject to public use, environmental, and standard employee protective conditions, and the Board authorized a 180-day period for the Dallas County Conservation Board and the Iowa Natural Heritage Foundation (collectively, INHF), to negotiate an interim trail use/rail banking agreement with UP. The trail use negotiation period was subsequently extended in a number of decisions, with the latest extension expiring on October 22, 2007.

By motion filed on October 19, 2007, INHF requests an additional extension of the NITU negotiating period through April 22, 2008.¹ INHF states that it has been negotiating with UP, but that the parties need additional time to finalize negotiations. UP states that it is willing to continue to negotiate with INHF and, therefore, agrees to the extension.

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, 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). Accordingly, the extension request will be granted. Given the time that has elapsed since abandonment was authorized, the parties are once again urged to conclude their negotiations so that further extensions are not necessary. This latest extension should provide ample time in which to conclude negotiations. Under the circumstances, the Board will likely deny any requests for a further extension.

¹ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Union Pacific Railroad Company—Abandonment Exemption—in Lancaster County, NE, STB Docket No. AB-33 (Sub-No. 181X) (STB served June 14, 2002).

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

It is ordered:

1. INHF's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended through April 22, 2008.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary