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SERVICE DATE – NOVEMBER 23, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 268X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
MILWAUKEE COUNTY, WIS.

Decided: November 22, 2011

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 3.08-mile line of railroad known as the Capitol Drive Industrial Lead, extending from milepost 92.21, the Shoreline connection, to the end of the line at milepost 89.13, south of Hampton Avenue in the Northeast Milwaukee area, in Milwaukee County, Wis. Notice of the exemption was served and published in the Federal Register on April 9, 2009 (74 Fed. Reg. 16,256-57). By decision and notice of interim trail use or abandonment (NITU) served on June 12, 2009, the proceeding was reopened and a 180-day period was authorized for the Wisconsin Department of Transportation (WisDOT), on behalf of Milwaukee County, Wis. (the County), to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. By a series of decisions, the last of which was served on May 31, 2011, the NITU negotiating period was extended until November 29, 2011.

On November 16, 2011, WisDOT filed a request for an extension of the negotiating period for 180 days. WisDOT states that negotiations with UP were delayed due to a County-wide budget shortfall which temporarily diverted attention away from numerous County initiatives. WisDOT adds that Federal and state funding requests have been granted, and that these funds will be a sufficient to allow consummation of the project. However, while the County is now engaging in the Federal acquisition process to comply with the award conditions, this process is complex and requires additional time. On November 18, 2011, UP filed a letter with the Board consenting to the extension request through May 28, 2012.¹

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended.² An extension of time will promote the establishment of trails and rail

¹ Although the consent exceeds the customary duration of 180 days (until May 27, 2012), the Board has granted such extensions in the past. See e.g., Union Pac. R.R.—Aban. Exemption—in Fulton and Peoria Counties, Ill., AB 33 (Sub-No. 262X) (STB served June 17, 2011).

² See Rail Aban.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

banking consistent with the National Trails System Act, 16 U.S.C. § 1247 (d). Accordingly, the NITU negotiating period will be extended 180 days, until May 28, 2012.

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 negotiating period under the NITU is extended until May 28, 2012.
3. This decision is effective on its service date.

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