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SERVICE DATE – LATE RELEASE MAY 31, 2011

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: May 31, 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 decisions served on December 21, 2009, June 22, 2010, and December 15, 2010, the NITU negotiating period was extended until June 2, 2011.

On May 3, 2011, WisDOT filed a request for an extension of the negotiating period for 180 days. WisDOT states that negotiations with UP have been delayed due to a County-wide budget shortfall which temporarily diverted attention away from numerous County initiatives. WisDOT maintains that a funding request submitted to the Federal Highways Administration was granted and will be a sufficient amount to allow consummation of the project. WisDOT also asserts that the County is now engaging in the federal acquisition process to comply with the award conditions, but that the process is complex and requires additional time. On May 5, 2011, UP filed a letter with the Board consenting to the extension request.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended.<sup>1</sup> An extension of time will promote the establishment of trails and rail 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 November 29, 2011.

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

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<sup>1</sup> See Rail Aban.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

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 November 29, 2011.
3. This decision is effective on its service date.

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