

41324
DO

SERVICE DATE – DECEMBER 29, 2010

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: December 28, 2010

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 its Essex-to-Miner Line, extending 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., subject to public use, environmental, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for a party to negotiate an interim trail use/rail banking agreement with UP.¹ The negotiating period under the CITU was extended until December 9, 2010, by decision served on June 10, 2010.

On December 7, 2010, the City of Sikeston (Sikeston) filed a letter notifying the Board that it has been engaged in negotiations with UP regarding a trail use agreement but, to date, those negotiations have not led to the completion of a final agreement. Sikeston requests that the Board grant an extension to the negotiating period of an additional 180 days in order to permit Sikeston and UP to continue their ongoing negotiations. On December 16, 2010, UP filed its response, stating that it has no objections to Sikeston's request and is willing to extend the negotiating period an additional 180 days to June 7, 2011.

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 CITU negotiating period may be extended.² Under the circumstances, further extensions of the negotiating periods are 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 periods will be extended for an additional 180 days from the December 9, 2010 expiration date until June 7, 2011.

¹ The public use condition expired on June 14, 2010, and by statute may not be extended beyond the 180-day period. The conditions imposed in the June 2009 decision remain in effect.

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

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

It is ordered:

1. Sikeston's request to extend the CITU negotiating period is granted, and the negotiating period is extended until June 7, 2011.

2. This decision is effective on its service date.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.