

40442
DO

SERVICE DATE – LATE RELEASE DECEMBER 16, 2009

SURFACE TRANSPORTATION BOARD

DECISION

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

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

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE AND A CERTIFICATE
OF INTERIM TRAIL USE

Decided: December 15, 2009

By decision and certificate of interim trail use or abandonment (CITU) served on June 17, 2009, 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 (the Line), 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. The negotiating period under the CITU expired on December 14, 2009.

Offer of Financial Assistance

On July 27, 2009, Mississippi Central Railroad Co. (MSCI), a Class III rail carrier, late filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) to purchase a portion of the Line, from milepost 208.95, near Sikeston, MO, to milepost 213.8, in Sikeston, a distance of 4.85 miles in Scott County (OFA Line). In a decision served on July 30, 2009, MSCI was granted leave to late file, but its OFA was rejected as insufficient to demonstrate that MSCI is a financially responsible offeror. On August 4, 2009, MSCI filed a revised OFA that addressed the deficiencies that led to the Board's rejection of its original OFA.

In a decision served on September 10, 2009 (September Decision), MSCI was found financially responsible and the effective date of the decision authorizing abandonment was postponed to permit the OFA process to proceed. The decision also set October 13, 2009, as the deadline for either party to request the Board to establish the terms and conditions for the purchase if the parties could not agree on the purchase price. On October 1, 2009, the parties filed a joint notice, stating that the parties had reached an agreement in principle for the purchase by MSCI of the OFA Line. The parties also stated that, upon entering into the purchase

agreement, they would inform the Board and seek a Board decision to approve the transaction and dismiss UP's abandonment application.¹

By letter filed on November 18, 2009, MSCI notified the Board that it is withdrawing its OFA for the line. MSCI states that the OFA Line did not include a connection with UP and, thus, MSCI would need to use track currently owned by the City of Sikeston (Sikeston) to connect to BNSF Railway Company (BNSF). According to MSCI, no agreement could be reached with Sikeston to permit MSCI to use Sikeston's connecting track. MSCI claims that it is withdrawing its OFA due to its inability to interchange with BNSF. Accordingly, the OFA process will be terminated, and the September Decision will be vacated to permit the prior abandonment authorization for the line subject to the OFA to become effective on the service date of this decision.

Certificate of Interim Trail Use

On November 24, 2009, 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 3, 2009, 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 12, 2010.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the CITU negotiating period may be extended.² Under the circumstances, an 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 CITU negotiating period will be extended until June 12, 2010.

¹ Under 49 CFR 1152.27(g)(2), if no agreement is reached and no party has requested that the Board set terms and conditions by the deadline (here, set as October 13, 2009, by the September Decision), the Board would, within 10 days, serve a decision vacating the previous decision, which postponed the effective date of the abandonment. Because of the statements contained in the parties' joint notice, the September Decision was not vacated at that time.

² See Rail Abandonments—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. The OFA process in this proceeding is terminated.
2. The September Decision is vacated to the extent it postponed the effective date of the abandonment to permit the OFA process to proceed. The abandonment will be effective on the service date of this decision, subject to the previously imposed conditions.
3. Sikeston's request to extend the CITU negotiating period is granted, and the negotiating period is extended until June 12, 2010.
4. This decision is effective on its service date.

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