

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 255)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—IN CARVER AND
SCOTT COUNTIES, MINN.

Decided: January 28, 2011

By decision and certificate of interim trail use or abandonment (CITU) served on April 1, 2008 (April 2008 decision), the Board granted the application filed by Union Pacific Railroad Company (UP) for abandonment of its Chaska Industrial Lead, extending from milepost 38.6, at Merriam, to milepost 33.0, on the east side of Chaska, a distance of 5.6 miles, in Carver and Scott Counties, Minn. The abandonment was subject to public use, environmental, historic preservation, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the Office of Carver County Regional Railroad Authority (CCRRA) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding.¹ The deadline to negotiate a CITU was extended to November 1, 2010, by decisions served on September 12, 2008, March 30, 2009, June 9, 2009, and September 2, 2010 (September 2010 decision). In this decision, the Board is again extending the CITU negotiating period.

By a pleading filed on December 15, 2010, the Scott County Regional Rail Authority (SCRRA)² and CCRRA jointly request a 6-month extension of the CITU negotiating period for the portion of the right-of-way extending from milepost 38.0 to milepost 33.0.³ SCRRA states

¹ The environmental conditions imposed in the April 2008 decision remain in effect. The public use condition expired on October 12, 2008, and by statute cannot be extended. By decision served on September 2, 2010, the Board removed the historic preservation condition and authorized UP to remove 2 bridges located near milepost 36.17.

² CCRRA filed its original CITU and public use request on behalf of The Minnesota River Valley Rail Preservation Project (MRVRPP), a collaboration between CCRRA and 4 other bodies politic existing under Minnesota law and interested in transportation, recreation, and public utilities. SCRRA is one of the bodies politic that comprises MRVRPP.

³ The original CITU included the entire right-of-way, extending from milepost 38.6 to milepost 33.0. In its last CITU extension request, filed on August 17, 2010, SCRRA excluded the portion of the line from milepost 38.6 to milepost 38.0 from its CITU extension request. In the September 2010 decision, the Board authorized UP to fully abandon the portion of the right-of-way between milepost 38.6 and milepost 38.0, subject to meeting the outstanding conditions

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that it was unable to reach an agreement with UP during the previous negotiating period, but that it has renewed funding for the acquisition. In a pleading also filed on December 15, 2010, UP concurs in the request to extend the negotiating period as to the portion of the right-of-way extending from milepost 38.0 to milepost 33.0 for 180 days, until April 30, 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 trail use negotiations, the Board retains jurisdiction and the CITU negotiating period may be extended.⁴ 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 Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, a CITU negotiating period will be imposed for 180 days from November 1, 2010 (until April 30, 2011), for that portion of the line extending from milepost 38.0 to milepost 33.0.

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

It is ordered:

1. This proceeding is reopened.
2. The request to extend the CITU negotiating period for the portion of the line between milepost 38.0 and milepost 33.0 is granted.
3. The CITU negotiating period for the portion of the line described above is extended until April 30, 2011.
4. This decision is effective on its service date.

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

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imposed in the April 2008 decision. By letter filed on September 8, 2010, UP states that it has consummated the abandonment of that portion of the right-of-way.

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