

32400
DO

SERVICE DATE - DECEMBER 31, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 158X)¹

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN MCPHERSON, ELLSWORTH AND RICE COUNTIES, KS

Decided: December 27, 2001

On October 24, 2000, Union Pacific Railroad Company (UP) and Central Kansas Railway Limited Liability Company (CKR) jointly filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit UP to abandon, and CKR to discontinue service over, a 28.02-mile line of railroad: (1) between milepost 523.02, near Geneseo, and milepost 495.80, near Lindsborg (Hoisington Subdivision); and (2) between milepost 531.40 and milepost 530.60, near Lindsborg (McPherson Subdivision), in McPherson, Ellsworth, and Rice Counties, KS. By decision and notice of interim trail use or abandonment (NITU)² served February 9, 2001, the exemption was granted subject to trail use, public use, environmental, and standard employee protective conditions.

In the February 9 decision, the Board authorized a 180-day period for the City of Lindsborg, KS (Lindsborg), to negotiate an interim trail use/rail banking agreement with UP for that portion of the right-of-way of the Hoisington Subdivision between milepost 495.8 and milepost 497.4, and for the entire right-of-way of the McPherson Subdivision. Also, a 180-day public use condition was imposed under 49 U.S.C. 10905.³

On February 13, 2001, the City of Marquette, KS (Marquette), filed a request for a NITU and for a public use condition. By decision and notice served March 7, 2001, the Board: (1) modified the February 9 NITU and authorized a 180-day period, until September 3, 2001, for Marquette to negotiate an interim trail use/rail banking agreement with UP for a 2-mile segment of the right-of-way of the Hoisington Subdivision between milepost 504.5 and milepost 506.5; and (2) denied Marquette's request for imposition of an additional public use condition.

¹ This proceeding formerly embraced STB Docket No. AB-406 (Sub-No. 12X), Central Kansas Railway Limited Liability Company—Discontinuance of Service Exemption—In McPherson, Ellsworth and Rice Counties, KS. By letter filed April 10, 2001, CKR's representative notified the Board that the discontinuance of service was consummated on April 5, 2001.

² See 16 U.S.C. 1247(d) and 49 CFR 1152.29.

³ The 180-day public use condition expired on September 7, 2001.

On August 23, 2001, Lindsborg and Marquette requested extensions of time for an additional 120 days each to complete negotiations with UP. By decision served September 4, 2001, both requests were granted.

By letters filed December 3 and 21, 2001, respectively, Marquette and Lindsborg request extensions of their negotiating periods in order to finalize the terms of their negotiated agreements. Both parties seek extensions of time for an additional 90 days. UP has indicated that it is agreeable to the extension requests.

An extension of the trail use negotiating period may be granted as long as the Board retains jurisdiction over the involved right-of-way and the carrier is willing to continue negotiations. Inasmuch as UP has not consummated the abandonment and has indicated a willingness to continue to negotiate, the extension request can be granted. See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); and SSW Ry. Co.—Aban.—In Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).⁴ Accordingly, the extensions will be granted.

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

It is ordered:

1. The requests to extend the interim trail use negotiating periods are granted.
2. The negotiating period under the NITU for Lindsborg is extended for a period of 90 days from December 6, 2001, until March 6, 2002.
3. The negotiating period under the NITU for Marquette is extended for a period of 90 days from January 2, 2002, until April 2, 2002.

⁴ As to Lindsborg, the negotiating period under the NITU expired on December 6, 2001. Even if the negotiating period has expired, where a carrier seeks a continuation of the negotiations and has not abandoned the line at the end of the previously imposed period, the Board continues to have jurisdiction to grant an extension. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996).

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary