

40863
DO

SERVICE DATE – JUNE 22, 2010

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: June 21, 2010

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. § 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 FR 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., to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. By decision served on December 21, 2009, the NITU negotiating period was extended until June 7, 2010.

On June 1, 2010, 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 extenuating circumstances; a county-wide budget shortfall has temporarily diverted attention away from numerous county initiatives, including the proposed trail development within the UP rail corridor. By letter filed on June 4, 2010, UP consents to WisDOT's request to extend the NITU.

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 NITU negotiating period may be extended.¹ 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, the NITU negotiating period will be extended 180 days, until December 4, 2010.

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

¹ 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 December 4, 2010.
3. This decision is effective on its service date.

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