

40535
DO

SERVICE DATE – MAY 3, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 258X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN SHELBY COUNTY, TENN.

Decided: April 30, 2010

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. § 1152 Subpart F—Exempt Abandonments to abandon a 2.61-mile line of railroad known as the Memphis Subdivision, extending from milepost 387.0 to milepost 389.61 in Shelby County, Tenn. Notice of the exemption was served and published in the Federal Register on August 20, 2008 (73 Fed. Reg. 49240).

By decision and notice of interim trail use or abandonment (NITU) served September 17, 2008, the proceeding was reopened and a 180-day period was authorized for Greater Memphis Greenline (GMG) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). The 180-day trail use negotiation period under the NITU was scheduled to expire on March 18, 2009. By decision served February 27, 2009, the trail use negotiation period was extended for a 180-day period to September 15, 2009.

By letter filed on January 11, 2010, UP now requests a 6-month extension of time to file a notice of consummation. UP states that negotiations with GMG for interim trail use on the line have ceased. But, according to UP, it now intends to satisfy salvage conditions the Board imposed on the abandonment in the September 17, 2008 decision prior to consummation. Those conditions require UP to complete consultations with both the U.S. Fish and Wildlife Service and the Tennessee Department of Environment and Conservation, Water Pollution Control Office before it salvages the rail and bridge structure on the right-of-way.

At issue is the question of whether UP timely filed its request for extension of time. A carrier that has received abandonment authority must file a letter notice of intent to consummate that authority within 1 year of the effective date of the Board's order to specify that it has exercised the authority granted and intends that the property be removed from the interstate rail network. 49 C.F.R. § 1152.29(e)(2). Under the regulation, failure to file the notice (or to obtain an extension) means that the authority to abandon expires unless there is a legal or regulatory barrier to consummation (*i.e.*, an outstanding condition). If an impediment to consummation exists, the railroad has 60 days after the satisfaction, expiration or removal of the condition to file the notice of consummation.

The NITU, which tolled the time for filing a notice of consummation, expired on September 1, 2009, and the 60-day deadline expired on October 31, 2009. UP notes, however, that the Board also imposed salvage conditions on the abandonment authority, which have not been satisfied.

The Board has stated that a salvage condition typically is not a regulatory barrier to consummation because a railroad may decide not to salvage the line immediately upon being relieved of its service obligations, but rather to leave the track and ties in place. Consummation of Rail Line Abans. That Are Subject to Historic Pres. and Other Envtl. Conditions, EP 678, slip op. at 4 (STB served Apr. 23, 2008). Thus, a salvage condition typically remains in place as a condition that attaches to the property and applies to salvage activities whenever they occur, even if salvage is conducted months or years after the abandonment is consummated and even if conducted by a successor interest.

Here, UP asserts that it intends to satisfy the salvage conditions before it consummates the abandonment. Moreover, UP evidently believes that the salvage conditions imposed in this case are a bar to consummation. UP is mistaken. While a carrier may decide to satisfy a salvage condition prior to abandonment, that decision alone does not toll the deadline to consummate the abandonment. Thus, UP should have sought an extension of the consummation deadline prior to its expiration. Under the circumstances, however, in which UP evidently believed the time to consummate was tolled, the request for an extension of time for UP to file a notice of consummation will be granted. The request is unopposed. Granting it will not cause prejudice to any parties.

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

It is ordered:

1. UP's request for an extension of time to file a notice of consummation of the abandonment is granted.¹
2. This decision is effective on its service date.

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

¹ UP subsequently filed a notice of consummation on March 22, 2010. Because UP's extension request is being granted by this decision, UP's consummation notice will be considered as effective on the date it was filed.