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SERVICE DATE - AUGUST 4, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 11X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY--ABANDONMENT  
EXEMPTION--IN HEMPSTEAD, LAFAYETTE AND COLUMBIA COUNTIES, AR

Decided: August 1, 2000

On January 9, 1998, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for the Director of Parks, Recreation and Tourism for the City of Hope, AR (HPRT), to negotiate an interim trail use/rail banking agreement with the Kansas City Southern Railway Company (KCS) for its line of railroad between milepost 4.00 at or near Hope, and milepost 46.78 at the Arkansas-Louisiana State Line, a distance of 42.78 miles, in Hempstead, Lafayette and Columbia Counties, AR. At the request of HPRT, the negotiation period under the NITU was extended by decisions served July 20, 1998, January 6, 1999, June 11, 1999, and January 12, 2000. The latest extension was scheduled to expire on June 27, 2000.

By letter dated July 1, 2000, HPRT requested that the negotiating period be extended for an additional 180 days. HPRT states that it has applied for and been approved for federal funds, through the Arkansas State Highway and Transportation Department and the Transportation Equity Act for the 21st Century, to acquire the right-of-way for trail use. By letter filed July 24, 2000, KCS agreed to the extension request.<sup>1</sup>

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.<sup>2</sup> 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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for an additional 180 days from June 27, 2000.

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<sup>1</sup> The official filing date of HPRT's letter was July 28, 2000, but KCS clearly was aware of it earlier than that, as reflected by its response filed on July 24, 2000.

<sup>2</sup> See Rail Abandonments--Supplement Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).

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

It is ordered:

1. The negotiating period under the NITU is extended to December 24, 2000.
2. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary