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SERVICE DATE - MARCH 29, 2002

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: March 28, 2002

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 conditions, 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.

By decision served September 4, 2001, the negotiating period was extended to December 6, 2001, for Lindsborg and to January 2, 2002, for Marquette. Most recently, in a decision served on December 31, 2001, the negotiating period was extended to March 6, 2002, for Lindsborg and to April 2, 2002, for Marquette.

By letters filed on March 5, 2002, 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 120 days. UP has indicated that it is agreeable to the extension requests.

By letter filed on March 18, 2002, UP notified the Board that, on January 8, 2002, it consummated the abandonment of the following segments of line: from milepost 523.02 to milepost 506.5 and from milepost 504.5 to milepost 497.4.

As to the request filed by Lindsborg, 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 Birt v. STB, 90 F.3d 580 (D.C. Cir. 1996); 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). Accordingly, Lindsborg's extension request will be granted.

As to Marquette's request, the predicate for interim trail use of rail lines is that the right-of-way be available—"rail banked"—for future active rail use. Such future use cannot be assured if the connections between the rail banked lines and the national rail system are withdrawn from the Board's jurisdiction. Because the railroad has now consummated the abandonment of the two segments of line surrounding the segment between mileposts 504.5 and 506.5, it appears that this segment may no longer qualify for a NITU, as it has been severed from the national rail system and active rail service evidently could not be restored. Accordingly, on this record, the extension sought by Marquette will be denied. UP and Marquette may, however, within 10 days of the service date of this decision, submit evidence explaining why the segment still qualifies for a NITU. Should the parties establish that the segment is in fact eligible for a NITU, a subsequent decision granting the requested extension will be issued.

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

It is ordered:

1. Lindsborg's request to extend the interim trail use negotiating period under the NITU is granted. The negotiating period is extended for a period of 120 days from March 6, 2002, until July 4, 2002.

2. Marquette's request to extend the interim trail use negotiating period under the NITU is denied.

3. UP and Marquette may, within 10 days from the service date of this decision, submit evidence explaining why the segment of line between milepost 504.5 and milepost 506.5 continues to qualify for a NITU.

4. This decision is effective 20 days after its service date.

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

Vernon A. Williams
Secretary