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SERVICE DATE – JUNE 9, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 255)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—IN CARVER AND
SCOTT COUNTIES, MN

Decided: June 8, 2009

By decision and certificate of interim trail use or abandonment (CITU) served on April 1, 2008, the Board granted the application filed by Union Pacific Railroad Company (UP) for abandonment of its Chaska Industrial Lead, extending from milepost 38.6, at Merriam, to milepost 33.0, on the east side of Chaska, a distance of 5.6 miles, in Carver and Scott Counties, MN. The abandonment was subject to public use, environmental, historic preservation, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the Office of Carver County Regional Railroad Authority (CCRRA) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. The deadline to negotiate a CITU was extended to May 26, 2009, by decisions served on September 12, 2008, and March 30, 2009. In this decision, the Board is again extending the CITU negotiating period.

By a pleading filed on May 21, 2009, CCRRA requests an extension of the negotiating period for 60 days, until July 25, 2009. CCRRA states that it intends to submit an offer for a trail use agreement within that period. In a pleading filed on May 26, 2009, UP concurs in the request to extend the negotiating period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the CITU 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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the CITU negotiating period will be extended for an additional 60 days from May 26, 2009 (until July 25, 2009).

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

¹ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

It is ordered:

1. The request to extend the CITU negotiating period is granted.
2. The negotiating period under the CITU is extended to July 25, 2009.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary