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SERVICE DATE – JUNE 6, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 251X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN DANE COUNTY, WI

Decided: June 5, 2006

By decision and notice of interim trail use or abandonment (NITU) served on May 31, 2005, a 180-day period was authorized for Union Pacific Railroad Company (UP) and Wisconsin & Southern Railroad Company (WSOR) to negotiate an interim trail use/rail banking agreement with Wisconsin Department of Natural Resources (WisDNR) for a 4.4-mile line of railroad, known as the Central Soya Line, Harvard Subdivision, between milepost 85.5 in the City of Madison and milepost 89.9 in the City of Fitchburg, in Dane County, WI.¹ The trail use negotiation period was scheduled to expire on November 28, 2005, but, by decision served on November 22, 2005, the negotiating period was extended until May 27, 2006.

On May 24, 2006, Wisconsin Department of Transportation (WisDOT) filed a request on behalf of WisDNR for an additional 180-day extension of the negotiating period. WisDOT states that negotiations are currently continuing in good faith between the parties, but more time is needed to finalize negotiations. On May 31, 2006, UP filed its response stating that it is willing to continue to negotiate with WisDOT/WisDNR and supports the extension request.

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 requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. 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). An extension of the negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d).² Accordingly, the NITU negotiating period will be extended for an additional 180 days from May 27, 2006 (until November 23, 2006).

¹ Notice of the exemption was served and published in the Federal Register on May 2, 2005 (70 FR 22758). The May 31, 2005 decision and notice also made the exemption subject to several environmental conditions.

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

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

It is ordered:

1. WisDOT's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to November 23, 2006.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary