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SERVICE DATE - AUGUST 15, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 190X)

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

Decided: August 14, 2003

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 2-mile line of railroad, known as the Menomonie Industrial Lead, extending from milepost 0.90 near Stout Oak Street to milepost 2.90 near 12th Avenue West, in Dunn County, WI. Notice of the exemption was served and published in the Federal Register on January 10, 2003 (68 FR 1510-11). On February 7, 2003, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the City of Menomonie (the City), acting through the Wisconsin Department of Transportation (WisDOT), to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding.<sup>1</sup> The 180-day negotiating period expired on August 6, 2003.

On August 12, 2003, WisDOT filed a request for an extension of the negotiating period for an additional 180 days. WisDOT states that the City and UP have had initial discussions and had some initial concerns, but that they are now willing to continue discussions. WisDOT states that the abandonment has not been consummated. By letter filed on August 13, 2003, UP advised that it has no objection to the requested extension.

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, a further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996);

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<sup>1</sup> The decision and notice also made the exemption subject to a salvage condition and a historic preservation condition. By decision served on March 18, 2003, the historic preservation condition imposed on the entire line was modified to limit the condition to the two bridges, D-3 and D-5, located at mileposts 2.12 and 2.38, respectively.

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

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 August 6, 2003, or until February 2, 2004.

This action 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 for 180 days until February 2, 2004.
3. This decision is effective on the date of service.

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

Vernon A. Williams  
Secretary