

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 270X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
OSBORNE AND SMITH COUNTIES, KAN.

Decided: October 8, 2010

Union Pacific Railroad Company (UP) and Kyle Railroad Company (Kyle) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service for UP to abandon, and for Kyle to discontinue service over, a 12.4-mile portion of a line of railroad known as the Lenora Branch Line, extending between milepost 540.3, west of Downs, and milepost 552.7, west of Portis, at the end of the line, in Osborne and Smith Counties, Kan. Notice of the exemption was served and published in the Federal Register on July 28, 2008 (73 Fed. Reg. 43,822-23) (July 2008 notice).¹

By decision and notice of interim trail use or abandonment (NITU) served on March 12, 2010, the proceeding was reopened and a 180-day period was authorized for Sunflower Recreational Trails, Inc. (SRT), to negotiate an interim trail use/rail banking agreement with UP for the right-of-way in this proceeding. The negotiating period under the NITU expired on September 8, 2010.

By letter filed on August 26, 2010, SRT requested an extension of the NITU negotiating period for an additional 180 days. In a response filed on September 15, 2010, UP indicated that representatives of UP's Real Estate Department and SRT had reached a consensus to go forward with the proposed trail use extension. However, UP stated that the Board of Directors of SRT (SRT Board) planned to meet on September 18, 2010, to either accept or reject the consensus reached. UP stated that it should be informed of the SRT Board's decision on September 20, 2010, and requested that the Board defer acting on the extension request until September 21, 2010.

By letter filed on September 22, 2010 (September 22 letter), UP states that SRT and UP were not able to reach a mutually acceptable agreement for trail use. Because the National Trails System Act, 16 U.S.C. § 1247(d) permits only voluntary interim trail use, the Board cannot grant SRT's extension request. See Rail Aban.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986). Accordingly, SRT's request will be denied.

¹ The July 2008 notice embraced Docket No. AB 486 (Sub-No. 5X), Kyle Railroad Co.—Discontinuance of Service Exemption—in Osborne and Smith Counties, Kansas.

UP, in its September 22 letter, requests an extension of time to July 1, 2011, to consummate the abandonment and to file a notice of consummation in this proceeding.² Under 49 C.F.R. § 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time. In support, UP states that, while most of the line has been salvaged, the bridge removal process was delayed during the NITU negotiating period and could take 6 to 8 months to complete. UP indicates that it desires to remove and salvage the bridges prior to filing for consummation of the abandonment because most of the right-of-way which makes up the line is reversionary and not owned by UP. UP has shown good cause to extend the time to consummate the abandonment and to file a notice of consummation in this proceeding. Accordingly, the extension request will be granted.

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

It is ordered:

1. SRT's request to extend the NITU negotiating period is denied.
2. UP's request for an extension of time to consummate the abandonment is granted.
3. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before July 1, 2011.
4. This decision is effective on its service date.

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

² The deadline for UP to file its notice of consummation was extended until June 1, 2010, by decisions served on July 27, 2009, and December 30, 2009. Because the NITU negotiating period described above constituted a barrier to consummation, UP would not have been required to consummate the abandonment until 60 days after its expiration, or November 7, 2010. See 49 C.F.R. § 1152.29(e)(2).