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SERVICE DATE - JANUARY 12, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 11X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY--ABANDONMENT EXEMPTION--
-IN HEMPSTEAD, LAFAYETTE AND COLUMBIA COUNTIES, AR

Decided: January 11, 2000

On January 9, 1998, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for the Director of Parks, Recreation and Tourism for the City of Hope, AR (HPRT), to negotiate an interim trail use/rail banking agreement with the Kansas City Southern Railway Company (KCS) for its line of railroad between milepost 4.00 at or near Hope, and milepost 46.78 at the Arkansas-Louisiana State Line, a distance of 42.78 miles, in Hempstead, Lafayette and Columbia Counties, AR. At the request of HPRT, the negotiating period under the NITU was extended by decisions served July 20, 1998, January 6, 1999, and June 11, 1999. The latest extension was scheduled to expire on December 30, 1999.

By letter dated December 17, 1999, HPRT requested that the negotiating period be extended for an additional 180 days.¹ By letter filed December 23, 1999, KCS agreed to the extension request.²

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.³ Under the circumstances,

¹ On December 23, 1999, the Board received a letter from KCS stating that it is agreeable to the 180-day extension request of the NITU negotiating period requested by HPRT. Search of the Board's records indicated that no filing had been received from HPRT. A Board staff member consulted with KCS's representative and tried several times to contact HPRT concerning the extension request. In a January 7, 2000 telephone conversation, HPRT stated that it had re-filed its extension request by express mail on January 3, 2000. HPRT's request was received by the Board on January 7, 2000.

² The official filing date of HPRT's letter was January 7, 2000, but KCS clearly was aware of it earlier than that, as reflected by its response filed on December 23, 1999.

³ See Rail Abandonments Supplement Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and

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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. 1449 (1997). Accordingly, the NITU negotiating period will be extended for an additional 180 days from December 30, 1999.

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

It is ordered:

1. The negotiating period under the NITU is extended to June 27, 2000.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

³(...continued)
Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).