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SERVICE DATE – SEPTEMBER 2, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-57 (Sub-No. 55X)

SOO LINE RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
MILWAUKEE COUNTY, WI

Decided: September 1, 2005

By decision and notice of interim trail use or abandonment (NITU) served on February 8, 2005 (February 2005 decision), the Board, under 49 U.S.C. 10502 exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by the Soo Line Railroad Company (Soo Line) of a 5-mile line of railroad known as the West Allis Line, extending from milepost 88.2 +/- (near the State Highway 41 crossing in Milwaukee) to milepost 93.2 +/- (near North 123rd Street in Wauwatosa), in Milwaukee County, WI, subject to trail use, environmental and standard employee protective conditions. The February 2005 decision authorized the Wisconsin Department of Transportation (WisDOT), on behalf of the Wisconsin Department of Natural Resources (WisDNR), to negotiate with Soo Line for interim trail use/rail banking for the 5-mile line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The NITU negotiating period expired on August 7, 2005.

On August 30, 2005, WisDOT, on behalf of WisDNR, filed a request for a 90-day extension of the NITU negotiating period. WisDOT states that negotiations are continuing between the parties but more time is needed to finalize negotiations. Soo Line filed its response on August 31, 2005, stating that it agrees to the extension request to complete negotiations.

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. Under the circumstances, an 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). An extension of time will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for 90 days from August 7, 2005.

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

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended to November 5, 2005.
3. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary