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SERVICE DATE – MARCH 29, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 310X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN POLK
COUNTY, IOWA

Decided: March 28, 2013

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 5.8-mile line of railroad on the Ankeny Industrial Lead between milepost 4.7 near Des Moines and milepost 10.5 at the end of the line at Ankeny, in Polk County, Iowa. Notice of the exemption was served and published in the Federal Register on August 24, 2012 (77 Fed. Reg. 51,614). The exemption was scheduled to become effective on September 25, 2012.

By decision and notice of interim trail use or abandonment (NITU) served on September 24, 2012 (September 24 decision), the proceeding was reopened and the notice of exemption amended, at UP's request, to exclude the portion of the line between milepost 4.7 and milepost 4.8 from the scope of the abandonment exemption. As modified, the abandonment exemption applies only to the line segment located between milepost 4.8 and milepost 10.5 (the Line). Additionally, the September 24 decision authorized the Polk County Conservation Board, the City of Ankeny, and the Iowa Natural Heritage Foundation (INHF) (collectively, trail sponsors) to negotiate an interim trail use/rail banking agreement with UP for the Line, pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ The decision also imposed, at the trail sponsors' request, a public use condition under 49 U.S.C. § 10905 prohibiting UP from disposing of the Line, including the tracks, ties, and signal equipment, for a period of 180 days to enable any state or local government agency or other interested person to negotiate the acquisition of the Line for public use.²

By letter filed on March 22, 2013, INHF, on behalf of the trail sponsors, now requests an extension of the NITU negotiating period until September 19, 2013. According to INHF, the trail sponsors have been in negotiations with UP, but the parties need additional time to complete

¹ The parties were authorized to negotiate a NITU for a 180-day period, which expired on March 23, 2013.

² By decision served on October 17, 2012, the Board reopened the proceeding to amend the previously imposed public use condition to permit removal of the tracks, ties, and signal equipment, while still prohibiting removal of potential trail-related structures. The public use condition expired on March 24, 2013, and cannot be extended.

negotiations for the transfer or sale of the Line. In a filing submitted on March 27, 2013, UP states that it is willing to continue negotiations with the trail sponsors for interim trail use and rail banking regarding the Line.³

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. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987). Under the circumstances, extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended to September 19, 2013.

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

It is ordered:

1. The trail sponsors' request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to September 19, 2013.
3. This decision is effective on its service date.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.

³ In its NITU extension request, INHF erroneously states that the portion of the right-of-way covered by the NITU extends from milepost 4.7 to milepost 10.5. As noted above, the abandonment exemption and NITU apply only to the line segment located between milepost 4.8 and milepost 10.5.