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SERVICE DATE – DECEMBER 15, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 268X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
MILWAUKEE COUNTY, WIS.

Decided: December 15, 2010

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 3.08-mile line of railroad known as the Capitol Drive Industrial Lead, extending from milepost 92.21, the Shoreline connection, to the end of the line at milepost 89.13, south of Hampton Avenue in the Northeast Milwaukee area, in Milwaukee County, Wis. Notice of the exemption was served and published in the Federal Register on April 9, 2009 (74 FR 16,256-57). By decision and notice of interim trail use or abandonment (NITU) served on June 12, 2009, the proceeding was reopened and a 180-day period was authorized for the Wisconsin Department of Transportation (WisDOT), on behalf of Milwaukee County, Wis. (the County), to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. By decisions served on December 21, 2009 and June 22, 2010, the NITU negotiating period was extended until December 4, 2010.

On November 17, 2010, WisDOT filed a request for an extension of the negotiating period for 180 days. WisDOT states that negotiations with UP have been delayed due to extenuating circumstances: a County-wide budget shortfall has temporarily diverted attention away from numerous County initiatives, including the proposed trail development within the UP rail corridor; and more recently, the County has been engaged in the process of complying with the conditions for federal grants to be used to acquire the right-of-way. By letter filed on November 19, 2010, UP consents to WisDOT's request to extend the NITU.

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.¹ Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 480, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended 180 days, until June 2, 2011.

¹ See Rail Aban.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

This decision 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 until June 2, 2011.
3. This decision is effective on its service date.

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