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SERVICE DATE – DECEMBER 9, 2014

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: December 8, 2014

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 Fed. Reg. 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 a series of decisions, the last of which was served on May 9, 2014, the NITU negotiating period was extended until November 6, 2014.

On October 14, 2014, WisDOT filed a motion to extend the NITU negotiating period for the right-of-way in this proceeding for an additional 180 days. WisDOT states that additional time is needed to complete interim trail use negotiations. In a response filed on October 28, 2014, UP states that it is willing to extend the negotiating period for an additional 180 days, but only for that portion of the line from milepost 91.98 to milepost 89.13, a distance of 2.85 miles. According to UP, it has determined that it now requires the portion of the right-of-way from milepost 92.21 to milepost 91.98 for its railroad operations and removes that portion of the line from trail use consideration.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for a portion of the line and is willing to continue trail use negotiations for that portion of the line, 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 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will

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

promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended only for rail line located between milepost 91.98 and milepost 89.13 for an additional 180 days, from November 6, 2014, to May 5, 2015. The NITU for the segment between milepost 92.21 to milepost 91.98 is vacated. See 49 C.F.R. § 1152.29(d)(2).

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

It is ordered:

1. This proceeding is reopened.
2. The NITU served on June 9, 2009, is modified, and the NITU for the segment of the right-of-way between milepost 92.21 to milepost 91.98 is vacated.
3. WisDOT's request to extend the NITU negotiating period is granted in part, as discussed above.
4. The negotiating period under the NITU is extended only for rail lines located between milepost 91.98 to milepost 89.13, until May 5, 2015.
5. This decision is effective on its service date.

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