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SERVICE DATE - FEBRUARY 19, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-493 (Sub-No. 7X)

TRACK TECH, INC.--ABANDONMENT EXEMPTION--IN ADAIR AND  
UNION COUNTIES, IA

Decided: February 17, 1999

By decision and notice of interim trail use or abandonment (NITU) served on July 2, 1998, a 180-day period was authorized for the Iowa Trails Council, Inc. (ITC), to negotiate an interim trail use/rail banking agreement with Track Tech, Inc. (Track Tech), for a 19.70-mile line of railroad between milepost 1.45 near Creston, and milepost 21.15 at the end of the line in or near Greenfield, in Adair and Union Counties, IA.<sup>1</sup> Thereafter, pursuant to the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and 49 CFR 1152.27, Green Valley Chemical Company (Green Valley) was authorized to acquire the portion of the line between milepost 1.45 and milepost 5.45.<sup>2</sup> By decision served on September 21, 1998, the Board approved the purchase and dismissed the exemption with respect to the part of the line between milepost 1.45 and milepost 5.45. The NITU remained in effect for the remainder of the line between milepost 5.45 and milepost 21.15. The 180-day period under the NITU expired on December 29, 1998.

By letter dated December 30, 1998, and filed on January 8, 1999, ITC requests a 180-day extension of the NITU negotiating period. ITC states that additional time is needed to finalize negotiations with The Burlington Northern and Santa Fe Railway Company (BNSF) and Track Tech. According to ITC, negotiations have been complicated because BNSF owns the real estate underlying the track. On February 2, 1999, ITC filed a letter it received from BNSF wherein BNSF indicates its agreement to a 90-day extension of the negotiating period. Track Tech, the entity that has the common carrier obligation to provide service over the line and that has been granted the exemption to abandon the line, did not file a response with the Board whether it was willing to continue negotiations with ITC.

By decision served on February 11, 1999, Track Tech was directed to notify the Board within 10 days of the service date of the decision whether it agreed to an extension of the NITU negotiating period for the portion of the line between milepost 5.45 and milepost 21.15. By letter

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<sup>1</sup> Notice of the filing of the petition was published in the Federal Register on April 6, 1998 (63 FR 16859).

<sup>2</sup> See Track Tech, Inc.--Abandonment Exemption--in Adair and Union Counties, IA, STB Docket No. AB-493 (Sub-No. 7X) (STB served Aug. 17, 1998).

filed on February 12, 1999, Track Tech states that Track Tech and BNSF agree to an extension of the NITU negotiating period for an additional 90 days.

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.<sup>3</sup> 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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 117 S. Ct. 1082, \_\_\_ U.S. \_\_\_ (1997). Accordingly, the NITU negotiating period will be extended for an additional 90 days from December 29, 1998.

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 for an additional 90 days to March 29, 1999.
2. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

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<sup>3</sup> See Rail Abandonments--Supplemental 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 Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).