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SERVICE DATE - OCTOBER 30, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 126X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN JEFFERSON COUNTY, WI

Decided: October 25, 2001

On November 5, 1998, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for the City of Fort Atkinson (City) to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company (UP) for the 2.0-mile line of railroad on the Clyman Branch from the end of the line at milepost 110.0 to milepost 112.0 near Fort Atkinson, in Jefferson County, WI. Extensions of the negotiating period were granted by decisions served April 30, 1999, October 21, 1999, July 3, 2000, October 18, 2000, and April 24, 2001. The latest extension was scheduled to expire on October 23, 2001.¹

On October 22, 2001, Wisconsin Department of Transportation (WisDOT), on behalf of the City, filed a request to extend the negotiating period for an additional 180 days. WisDOT states that another appraisal has been completed and that negotiations between the parties (the City and UP) are currently continuing in good faith. In a response submitted by facsimile on October 24, 2001, UP agreed to the extension request.

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 period may be extended.² 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, 519 U.S. 1449 (1997). Accordingly, the NITU negotiating period will be extended for an additional 180 days from October 23, 2001.

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

¹ Notice of the exemption under 49 CFR 1152 Subpart F was served and published in the Federal Register on October 8, 1998 (63 FR 54186-87).

² 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).

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The NITU negotiating period is extended until April 21, 2002.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary