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SERVICE DATE - JUNE 21, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 208X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
MARSHALL COUNTY, KS

Decided: June 18, 2004

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152.50 Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon and discontinue service over an 8.13-mile line of railroad from milepost 133.13 near Marysville to milepost 125.00 near Marietta, in Marshall County, KS. Notice of the exemption was served and published in the Federal Register on November 18, 2003 (69 FR 65114-15). On December 17, 2003, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the Nebraska Trails Foundation, Inc. (NTF), to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding.¹ The negotiating period under the NITU was scheduled to expire on June 15, 2004.

On June 14, 2004, NTF filed a request for an extension of the negotiating period for an additional 180 days until December 12, 2004. NTF states that it and UP are continuing in good faith discussions, and that it is working on financing arrangements along with other entities. In a response filed June 15, 2004, UP states that it is willing to continue negotiations with NTF and is agreeable 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 negotiating period may be extended. Under the circumstances, an 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. 1149 (1997). An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended for an additional 180 days from June 15, 2004 (until December 12, 2004).

¹ The December 17, 2003 decision also imposed a 180-day public use condition (that expired on June 15, 2004) and imposed a condition that required UP to consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic stations markers.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NTF's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to December 12, 2004.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary