

SERVICE DATE - LATE RELEASE NOVEMBER 27, 1996

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

Docket No. AB-3 (Sub-No. 127X)

MISSOURI PACIFIC RAILROAD COMPANY  
--ABANDONMENT EXEMPTION--  
IN MUSKOGEE COUNTY, OK

Decided: November 25, 1996

By decision and notice of interim trail use or abandonment (NITU) served February 22, 1996, the Board imposed a 180-day period expiring August 20, 1996, for the Muskogee City-County Port Authority (Port) to negotiate an interim trail use/rail banking agreement with Missouri Pacific Railroad Company (MPRR) for a portion of the former Oklahoma Subdivision near Muskogee from milepost 128.6 to the end of the line at milepost 129.5, a distance of approximately 0.9-mile in Muskogee County, OK. By decision served August 26, 1996, the negotiation period was subsequently extended for 90 days, until November 18, 1996.<sup>2</sup>

On November 18, 1996, the Port filed a second extension request to extend the negotiation period for 193 days, until May 30, 1997. The Port states that because of the careful examination of complex land records, appraisal of the right-of-way, and the final approval of documents, the negotiation process has taken longer than anticipated, and the parties were not able to conclude a definitive agreement by November 18, 1996. MPRR agrees with the extension request.

This extension request slightly exceeds the customary request of 180 days. The 180-day period is not statutory. It was adopted in Rail Abandonments--Use of Rights-of-way as Trails, 2 I.C.C.2d 591, 605 (1986), to promote the expeditious conclusion of negotiations. In keeping with 49 CFR 1100.3 and the consensual nature of the National Trails System Act, 16 U.S.C. 1247(d), the requested extension will be granted. MPRR is willing to continue trail use negotiations and the requested extension will promote the establishment of trail use and rail banking consistent with the Trails Act.

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

It is ordered:

1. The request to extend the interim trail use negotiation period is granted.
2. The NITU negotiation period is extended to May 30, 1997.
3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

---

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

<sup>2</sup> Even if the negotiating period has expired, where a carrier seeks continuation of the negotiations and has not abandoned the line at the end of the previously imposed period, the Board continues to have jurisdiction to grant an extension. See Consolidated Rail Cor-D.--Aband. Exemp.--Lancaster and Chestel; Counties, PA, Docket No. AB-167 (Sub-No. 1095X) (ICC served July 24, 1991).