

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

Docket No. AB-3 (Sub-No. 90X)

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

Docket No. AB-3 (Sub-No. 66)

MISSOURI PACIFIC RAILROAD COMPANY—ABANDONMENT—IN  
MUSKOGEE, WAGONER, AND TULSA COUNTIES, OK

Decided: July 17, 1997

In a decision and certificate and notice of interim trail use or abandonment served on October 11, 1996, the Board modified the certificate issued in Docket No. AB-3 (Sub-No. 66) and the notice of exemption served in Docket No. AB-3 (Sub-No. 90X) to the extent necessary to implement interim trail use/rail banking. The Board authorized a 180-day period for the city of Muskogee (the City) to negotiate a trail use agreement with Missouri Pacific Railroad Company (MP)<sup>2</sup> for the right-of-way of a 3.7-mile segment of the Midland Branch between milepost 97.50 and milepost 101.20.<sup>3</sup> The 180-day negotiating period was scheduled to expire on April 9, 1997, but was extended through July 7, 1997, by a decision served on April 8, 1997.

By letter filed on July 8, 1997, the City requests a further extension of time to complete the negotiations. Assertedly, the City and MP are working with the Muskogee City-County Port Authority (Port) to consummate an interim trail use/rail banking agreement that includes a 0.9-mile segment of MP's former Oklahoma Subdivision as well as the 3.7-mile segment involved in these proceedings.<sup>4</sup> The City submits that additional time is needed to complete the required appraisals of the lands and improvements and to conclude the complex negotiations. It therefore requests that the deadline for negotiating an agreement be extended to November 26, 1997, to coincide with the current deadline in Docket No. AB-3 (Sub-No. 127X). MP consents to the extension request.

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<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the 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 proceedings that were 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. Therefore, this decision applies the law in effect prior to the ICCTA.

<sup>2</sup> MP merged into Union Pacific Railroad Company on January 1, 1997. For purposes of this decision, we will continue to refer to the carrier as MP.

<sup>3</sup> This consisted of a 2.7-mile segment between milepost 97.50 and milepost 100.20 from Docket No. AB-3 (Sub-No. 90X) and a 1-mile segment between milepost 100.20 and milepost 101.20 from Docket No. AB-3 (Sub-No. 66).

<sup>4</sup> In *Missouri Pacific Railroad Company—Abandonment Exemption—in Muskogee County, OK*, Docket No. AB-3 (Sub-No. 127X) (STB served Feb. 22, 1996), the Board imposed a 180-day period expiring August 20, 1996, for the Port to negotiate an interim trail use/rail banking agreement with MP for a portion of the former Oklahoma Subdivision near Muskogee extending from milepost 128.6 to the end of the line at milepost 129.5. The negotiating period was subsequently extended to November 26, 1997, by decisions served August 26, and November 27, 1996, and June 3, 1997.

Where, as here, the carrier has not abandoned the line at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board's jurisdiction is not terminated and the negotiating period may be extended.<sup>5</sup> Under the circumstances, a further extension is warranted and will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the time period for negotiating an interim trail use/rail banking agreement will be extended to November 26, 1997.

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/rail banking negotiating period is granted.
2. The negotiating period is extended to November 26, 1997.
3. 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>5</sup> See *Rail Abandonments—Supplemental Trails Act Procedures*, 4 I.C.C.2d 152, 157-58 (1987).