

SERVICE DATE – NOVEMBER 19, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 316X)
UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN FRANKLIN COUNTY, IOWA

Decided: November 16, 2018

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 0.59-mile line on its Bristow Subdivision, from milepost 318.07 to milepost 318.66 near Hampton, in Franklin County, Iowa. Notice of the exemption was served and published in the Federal Register on November 8, 2013 (78 Fed. Reg. 67,217). By decision and notice of interim trail use or abandonment (NITU) served on December 10, 2013 (December 2013 decision), the proceeding was reopened, and a 180-day period was authorized for the Franklin County Conservation Board and the Iowa National Heritage Foundation (collectively, the Commenters) jointly to negotiate with UP for an interim trail use/rail banking agreement for a 0.56-mile portion of the line, from milepost 318.10 to milepost 318.66 (the Line), under § 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29 until June 8, 2014.¹

By a series of decisions issued from July 21, 2014, to July 18, 2018, the Board granted requests of the Commenters, with consent from UP, to extend the NITU negotiating period, most recently to November 14, 2018. The Board's July 18, 2018 decision, which granted the most recent extension, also noted a June 11, 2018 letter filed by the National Association of Reversionary Property Owners (NARPO) and directed the Commenters to provide additional information if they sought to again extend the NITU negotiating period. Specifically, the Commenters were asked to describe in detail the progress of their negotiations with UP, the specific actions still needed to be taken to reach an agreement, and when they expect an agreement with UP to be finalized.

On November 13, 2018, the Commenters filed a letter requesting an extension of the NITU negotiation period for another 180 days, until May 13, 2019. The Commenters state that they have completed negotiations with UP and a closing date has been set for February 28, 2019. The Commenters further state, however, that additional time is needed for UP to finalize a

¹ The December 2013 decision also imposed a public use condition for the entire right-of-way, which expired on June 9, 2014, and two environmental consultation conditions regarding salvage that remain in effect. These conditions are not barriers to UP's consummation of the abandonment.

contract with a salvage company for a 0.4-mile segment of the Line. By letter filed on November 14, 2018, UP states that it is willing to continue negotiations with the Commenters.

On November 14, 2018, the NARPO filed a letter objecting to the requested extension. NARPO questions the amount of progress the Commenters and UP have made since the original NITU was issued and argues, without support, that the NITU would be rendered “null and void” if the Board adopts the rule proposed in Limiting Extensions of Trail Use Negotiating Periods, Docket No. EP 749 (Sub-No. 1).²

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. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); see also Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Because these requirements have been met, and because the Commenters have provided the information requested in the July 18, 2018 decision, the NITU negotiating period will be extended for an additional 180 days, to May 13, 2019.

If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If the Commenters seek to further extend the NITU negotiating period, they must provide specific information showing substantial additional progress toward completing the outstanding items they identified in their most recent extension request. The Board would then consider such information in determining whether to grant any additional extensions.

It is ordered:

1. The Commenters’ request to extend the NITU negotiating period for an additional 180 days is granted.
2. The NITU negotiating period is extended from November 14, 2018, to May 13, 2019, for the 0.56-mile portion of the line from milepost 318.10 to milepost 318.66.
3. Any future requests to extend the NITU negotiating period shall include the detailed information described above.

² The proposal in Docket No. EP 749 (Sub-No. 1) would limit the number of 180-day extensions of NITU negotiating periods to a maximum of six, absent extraordinary circumstances. Comments on the proposed rule in that docket were due on November 1, 2018; reply comments are due on November 21, 2018.

4. If an interim trail use/rail banking agreement is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

5. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.