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SERVICE DATE - AUGUST 30, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 158X)¹

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN MCPHERSON, ELLSWORTH AND RICE COUNTIES, KS

Decided: August 27, 2002

On October 24, 2000, Union Pacific Railroad Company (UP) and Central Kansas Railway Limited Liability Company (CKR) jointly filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit UP to abandon, and CKR to discontinue service over, a 28.02-mile line of railroad: (1) between milepost 523.02, near Geneseo, and milepost 495.80, near Lindsborg (Hoisington Subdivision); and (2) between milepost 531.40 and milepost 530.60, near Lindsborg (McPherson Subdivision), in McPherson, Ellsworth, and Rice Counties, KS. By decision and notice of interim trail use or abandonment (NITU)² served February 9, 2001, the exemption was granted subject to trail use, public use, environmental conditions, and standard employee protective conditions.

In the February 9 decision, the Board authorized a 180-day period for the City of Lindsborg, KS (Lindsborg), to negotiate an interim trail use/rail banking agreement with UP for that portion of the right-of-way of the Hoisington Subdivision between milepost 495.8 and milepost 497.4, and for the entire right-of-way of the McPherson Subdivision. Also, a 180-day public use condition was imposed under 49 U.S.C. 10905.³ Subsequent decisions served on September 4, 2001, December 31, 2001, March 29, 2002, and July 3, 2002, extended the NITU negotiating period for Lindsborg until September 3, 2002.

¹ This proceeding formerly embraced STB Docket No. AB-406 Sub-No. 12X), Central Kansas Railway Limited Liability Company—Discontinuance of Service Exemption—In McPherson, Ellsworth and Rice Counties, KS. By letter filed April 10, 2001, CKR's representative notified the Board that the discontinuance of service exemption was consummated on April 5, 2001.

² See 16 U.S.C. 1247(d) and 49 CFR 1152.29.

³ The 180-day public use condition expired on September 7, 2001.

By facsimile submitted on August 21, 2002,⁴ Lindsborg requests another extension of the NITU negotiating period for 180 days until March 2, 2003, to complete negotiations for the specified portion of the right-of-way of the Hoisington Subdivision and for the entire right-of-way of the McPherson Subdivision. Lindsborg states that the parties continue to negotiate on the value of the non-reversionary property and that fiber optic easements must be registered before there can be a transfer of property. Additionally, Lindsborg states that both parties continue to negotiate in good faith. By letter submitted on August 27, 2002, UP responded that it is agreeable to the request.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended.⁵ The parties have shown that the additional time is necessary to complete negotiations. 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 for Lindsborg will be extended until March 2, 2003.

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 negotiating period is granted.
2. The negotiating period for Lindsborg under the NITU is extended until March 2, 2003, for the portion of the right-of-way of the Hoisington Subdivision between milepost 495.8 and milepost 497.4 and for the entire .80-mile right-of-way of the McPherson Subdivision between milepost 531.40 and milepost 530.60.

⁴ On August 26, 2002, Lindsborg submitted an amendment clarifying discrepancies in the August 21 filing.

⁵ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary