

41643
DO

SERVICE DATE – JUNE 24, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 263X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
COOK COUNTY, ILL.

Decided: June 23, 2011

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon the Weber Industrial Lead from milepost 5.8 near Wilson Avenue, Chicago, to milepost 9.5 near Touhy Avenue, Skokie, in Cook County, Ill., a distance of 3.7 miles. Notice of the exemption was served and published in the Federal Register on November 18, 2008 (73 Fed. Reg. 68,497). The exemption was scheduled to become effective on December 18, 2008.

The Board served a decision and notice of interim trail use or abandonment (NITU) in this proceeding on December 17, 2008, authorizing a 180-day period for (1) the Village of Lincolnwood, Ill. (the Village) to negotiate an interim trail use/rail banking agreement with UP for a portion of UP's Weber Industrial Lead located in the Village of Lincolnwood, from approximately milepost 8.4 at Devon Avenue to the border with the Village of Skokie, Ill., at approximately milepost 9.45 near Touhy Avenue, a distance of approximately 1.05 miles, and (2) the City of Chicago (the City), acting by and through its Department of Transportation, to negotiate an interim trail use/rail banking agreement with UP for that portion of the Weber Industrial Lead from milepost 5.8 near Wilson Avenue to the border with the Village at approximately milepost 8.4 near Devon Avenue, a distance of approximately 2.6 miles.¹

The negotiating periods under the NITU were scheduled to expire on June 16, 2009, but numerous extensions of the negotiating periods have been granted in order for the City and the Village to complete their trail plans and to continue negotiations with UP. The latest NITU extensions expired on June 6, 2011.

By letter filed on May 20, 2011, the City seeks an extension of the negotiating period for an additional 180 days, until December 3, 2011, for that portion of the line between mileposts 5.8

¹ The December 17 decision also imposed a self-executing environmental condition requiring UP, prior to commencement of any salvage activities, to consult with the U.S. Army Corps of Engineers—Chicago District regarding potential permitting requirements under Section 404 of the Clean Water Act (33 U.S.C. § 1344). A public use condition, also imposed there, expired on June 16, 2009.

and 8.4. The City states that, since the last extension, the Chicago Department of Transportation has completed contract negotiations with McDonough Associates to lead a team of consultants to provide Phase I preliminary engineering and environmental studies and to provide real estate acquisition services. According to the City, it continues to make progress but needs additional time to complete its trail engineering plan and conclude negotiations with UP. In a response filed on May 26, 2011, UP states that it is willing to negotiate with the City and supports the extension request.

By letter filed on May 26, 2011, the Village seeks an extension of the negotiating period for an additional 180 days, until December 3, 2011, for that portion of the line between mileposts 8.4 and 9.45. The Village states that, since the last extension, it has accomplished the following: (1) completed an existing condition land survey of the entire right-of-way; (2) completed and submitted to IDOT a complete environmental survey report; and (3) completed both a conceptual routing and grading plan for the bicycle path that is proposed for the right-of-way. The Village adds that it anticipates completion of a full Phase 1 Preliminary Engineering Report in the next 2-3 months, which it will submit to IDOT. The Village indicates that it continues to work with IDOT, FHWA, and UP to produce all necessary plans, obtain all necessary approvals, and complete all required engineering and preparations for the proposed purchase and trail use of the right-of-way. The Village does not, however, expect to complete all pre-acquisition work and plans until after the expiration of the current negotiating period. As such, it requests an extension to complete its trail plan to satisfy applicable requirements and to continue negotiations with UP. In a response filed on June 1, 2011, UP states that it is willing to negotiate with the Village and supports the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating periods and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating periods may be extended.² Under the circumstances, further extension of the negotiating periods is warranted. See 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). Accordingly, the NITU negotiating periods will be extended for 180 days, until December 3, 2011.

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

It is ordered:

1. The requests by the City and the Village to extend the NITU negotiating periods are granted.

² See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

2. The NITU negotiating periods are extended until December 3, 2011.
3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.