

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: June 21, 2010

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. § 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 notice was scheduled to become effective on December 18, 2008.

On December 17, 2008, a decision and notice of interim trail use or abandonment (NITU) was served in this proceeding 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 period under the NITU was scheduled to expire on June 16, 2009. By decisions served June 12, 2009, June 18, 2009, and May 4, 2010, the negotiating periods under the NITU were extended until June 11, 2010, in order for the Village and the City to complete their trail plans and to continue negotiating with UP.

By letter filed on May 28, 2010, the Village seeks an extension of the negotiating period for an additional 180 days, until December 8, 2010, for that portion of the line between mileposts 8.4 and 9.45. The Village states that in furtherance of the procedure to receive an 80 percent matching grant from the Congestion Mitigation and Air Quality Improvement Program (CMAQ),

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.

it has accomplished the following: (1) on April 16, 2010, the Village Board of Trustees formally approved the Village's 5-year capital plan, which plan contemplates the allocation of Village funds for the proposed purchase; (2) the Village has formally applied for approval of Engineering Design Services and Land Acquisition from the Illinois Department of Transportation (IDOT), as required in connection with the administration of the CMAQ grant; (3) on March 19, 2010, IDOT granted initial approval of the required Local Agency Agreement for Federal Participation; (4) the Village has submitted a draft Phase I Engineering Service Agreement to IDOT, but has received only minor comments in response; and (5) on May 11, 2010, Village representatives met for a second time with representatives of IDOT and the Federal Highway Administration (FHWA) regarding the Village's request for "advanced acquisition" approval, which would allow the Village to obtain the grant and complete negotiations with UP in a shorter timeframe. The Village states that it continues to work with IDOT, FHWA and UP to produce all necessary plans and obtain all necessary approvals for the proposed purchase, but it does not expect to receive those approvals until after the expiration of the current negotiating period. As such, it requests an extension to complete its trail plan to satisfy CMAQ and IDOT requirements and continue negotiations with UP. In a response filed on June 4, 2010, UP states that it is willing to negotiate with the Village and supports the extension request.

By letter filed on June 4, 2010, the City seeks an extension of the negotiating period for an additional 180 days, until December 8, 2010, for that portion of the line between mileposts 5.8 and 8.4. The City states that it has reviewed 26 proposals from consultant teams, and its Department of Transportation (DOT) has chosen the team with which it will negotiate a contract (pending approvals by its Departments of Procurement Services and Law). The City states that the team will conduct preliminary engineering and environmental studies and will also provide real estate acquisition services under DOT's guidelines. The City further states that 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 June 7, 2010, UP states that it is willing to negotiate with the City and supports the extension request.

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.² Under the circumstances, further extension of the negotiating period is warranted. See Birt v. Surface Transportation Board, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pacific Railroad Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating periods will be extended for 180 days, until December 8, 2010.

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

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 Village and the City to extend the NITU negotiating periods are granted.
2. The NITU negotiating periods are extended until December 8, 2010.
3. This decision is effective on the date of service.

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