

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-314 (Sub-No. 2X)

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN LINN COUNTY, IA

Decided: October 15, 2004

By decision and notice of interim trail use or abandonment (NITU) served on October 25, 2002, the Board granted Chicago Central & Pacific Railroad Company (CCP) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a segment of the Marion-Louisa Industry Lead, extending from milepost ZA 225.7 to milepost ZA 229.5, a distance of approximately 3.8 miles in Linn County, IA. The exemption was granted subject to trail use, public use, environmental, and standard employee protective conditions, and authorized a 180-day period for the City of Marion, IA (Marion), and the City of Cedar Rapids, IA, to negotiate an interim trail use/rail banking agreement with CCP. The negotiating period under the NITU was scheduled to expire on April 25, 2003, but was subsequently extended by decisions served on April 23, 2003, October 29, 2003, and April, 21, 2004, with the latest extension expiring on October 16, 2004.¹

On October 12, 2004, Marion filed a request to extend the NITU negotiating period for an additional 180 days for that portion of the rail line within its corporate city limits. Marion states that negotiations remain suspended pending completion of the environmental assessment. Marion notes, however, that the contracts for the environmental assessment have been awarded, that CCP has recently approved the access agreement to allow for Phase II testing, and that the environmental assessment should be available within the next 6 months.

By letter filed on October 14, 2004, CCP states that it agrees with the requested extension of the negotiation period for the portion of the line between mileposts ZA 225.7 and ZA 228.45.

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. Under the circumstances,

¹ The decision served on April 23, 2003, modified the NITU to cover only that portion of the line between mileposts ZA 225.7 and ZA 229.1. The decision served on October 29, 2003, modified the NITU to cover only that portion of the line between mileposts ZA 225.7 and ZA 228.45.

an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to April 14, 2005.

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 for the portion of the line between mileposts ZA 225.7 and ZA 228.45 is granted.
2. The negotiating period under the NITU is extended to April 14, 2005.
3. This decision is effective on its service date.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary