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SERVICE DATE – JUNE 22, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 43 (Sub-No. 184X)

ILLINOIS CENTRAL RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN COOK COUNTY, ILL.

Decided: June 21, 2010

By decision and notice of interim trail use or abandonment (NITU) served on December 17, 2008 (December 2008 decision), the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903, the abandonment by Illinois Central Railroad Company (IC) of approximately 3,205 feet of rail line beginning at the point of clearance at Station 26+58 (Halsted Street) and extending northeasterly approximately 3,205 feet to the end of the track at Station 58+63 (Cermak Road), all in Chicago, Cook County, Ill., subject to trail use, public use, and standard employee protective conditions.¹

In the December 2008 decision, a 180-day period was authorized for the City of Chicago, acting by and through the Chicago Department of Transportation (the City), to negotiate an interim trail use/rail banking agreement with IC for the right-of-way. The negotiating period under the NITU was extended several times, with the latest extension served on December 18, 2009, extending the NITU negotiating period until June 10, 2010.

By letter filed on June 4, 2010, the City requests an extension of the negotiating period for an additional 180 days, until December 7, 2010. The City states that it has continued to pursue the trail project, but additional time is needed to secure project financing, to complete the trail engineering plan, and to conclude negotiations with IC. In a response filed on June 7, 2010, IC agreed to the City's 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. 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 period will be extended for an additional 180 days from June 10, 2010, until December 7, 2010.

¹ The public use condition expired on August 1, 2009, and may not be extended.

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

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

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended until December 7, 2010.
3. This decision is effective on the date of service.

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