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SERVICE DATE – DECEMBER 28, 2010

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: December 23, 2010

In this decision, an extension is granted for negotiating a trail use/rail banking agreement. By decision and notice of interim trail use or abandonment (NITU) served on December 17, 2008, 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. The exemption was made subject to a public use condition,¹ standard employee protective conditions, and a trail use condition which authorized a 180-day period 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 decision served on June 22, 2010, which extended the NITU negotiating period until December 7, 2010.

By letter filed on November 29, 2010, the City requests an extension of the negotiating period for an additional 180 days, until June 5, 2011. 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 December 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 December 7, 2010, until June 5, 2011.

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 for an additional 180 days is granted.
2. The NITU negotiating period is extended until June 5, 2011.
3. This decision is effective on the date of service.

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