

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: December 17, 2010

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. Part 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.

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, May 4, 2010, and June 25, 2010, the negotiating periods under the NITU were extended until December 8, 2010, in order for the Village and the City to complete their trail plans and to continue negotiating with UP.

By letter filed on November 29, 2010, the City seeks an extension of the negotiating period for an additional 180 days, until June 6, 2011, for that portion of the line between mileposts 5.8 and 8.4. The City states that its Chief Procurement Officer formally authorized the

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.

Chicago Department of Transportation to enter contract negotiations with McDonough Associates to lead a team of consultants to provide Phase I preliminary engineering and environmental studies compliant with the Federal Highway Administration (FHWA) standards and to provide real estate acquisition services under the U.S. Department of Transportation 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 December 2, 2010, UP states that it is willing to negotiate with the City and supports the extension request.

By letter filed on December 2, 2010, the Village seeks an extension of the negotiating period for an additional 180 days, until June 6, 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) on October 18, 2010, the Illinois Department of Transportation (IDOT) approved the required Local Agency Agreement and Phase I Engineering Agreement necessary for use of the right-of-way; and (2) it has commissioned a land survey of the entire right-of-way for use as part of the Phase I agreement and ultimately for the proposed purchase. Further, the Village states 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. 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 December 9, 2010, 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 period 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 June 6, 2011. Given the time that has elapsed since abandonment was granted, the negotiating parties are urged to conclude their negotiations so that further extensions are not necessary.

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

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

It is ordered:

1. The requests by the City and the Village to extend the NITU negotiating periods are granted.
2. The NITU negotiating periods are extended until June 6, 2011.
3. This decision is effective on the date of service.

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