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SERVICE DATE – JUNE 29, 2009

SURFACE TRANSPORTATION BOARD

DECISION

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

ILLINOIS CENTRAL RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN COOK COUNTY, IL

Decided: June 26, 2009

By decision and notice of interim trail use or abandonment (NITU) served on December 17, 2008, (December 17 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, IL, subject to trail use, public use, and standard employee protective conditions.¹

In the December 17 decision, a 180-day period was authorized for the City of Chicago, acting by and through the Chicago Department of Transportation (referred to as the City) to negotiate an interim trail use/rail banking agreement with IC for the right-of-way. The negotiating period under the NITU expired on June 15, 2009.²

¹ The exemption was scheduled to become effective on January 16, 2009, unless it was stayed by the Board or a party filed a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) by December 24, 2008. On December 18, 2008, Chicago Port Railroad Company (CPC) filed a petition to toll the deadline for filing an OFA, which was granted in a decision served on December 23, 2008 (December 23 decision). The December 23 decision tolled the time period for CPC to file an OFA until January 23, 2009, and postponed the effective date of the exemption until February 2, 2009, as per 49 CFR 1152.27(c)(1)(i)(C). CPC subsequently notified the Board that it had decided not to file an OFA.

² Also in the December 17 decision, a public use condition was imposed for a period of 180 days from January 16, 2009 (the effective date of the December 17 decision). However, because the effective date was postponed to February 2, 2009, the Board, by decision served on January 30, 2009, ran the 180-day period for the public use condition from February 2, 2009, until August 1, 2009, to afford the full 180-day period allowed by statute, and which cannot be extended, to any state or local government agency or any other interested person to negotiate the acquisition of the line for public use.

By letter filed on June 12, 2009, the City requests an extension of the negotiating period for an additional 180 days. The City states that it has been working to secure funds for the trail project, but more time is needed to complete project financing, rail engineering, and negotiations with IC. In a response filed on June 15, 2009, 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.³ 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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended for an additional 180 days from June 15, 2009 (until December 12, 2009).

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 12, 2009.
3. This decision is effective on the date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary

³ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).