

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 284X)

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

Decided: April 23, 2012

This decision grants an extension of time to negotiate a trail use/rail banking agreement.

By decision and notice of notice of interim trail use or abandonment (NITU) served on September 22, 2010 (September 2010 decision), the Board granted Union Pacific Railroad Company (UP) an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon a 3.17-mile line of railroad known as the St. Charles Industrial Lead between milepost 35.13 and the end of the line at milepost 38.30, near St. Charles, in Kane County, Ill., subject to public use, trail use, and standard employee protective conditions.

In the September 2010 decision, a 180-day period was authorized to permit public use negotiations and to permit the County of Kane, Forest Preserve District of Kane County, St. Charles Park District, and the City of St. Charles, all municipal corporations (collectively, Local Agencies), to negotiate an interim trail use/rail banking agreement with UP for the right-of-way. The interim trail use negotiating period under the NITU was extended several times, with the latest decision (served on August 22, 2011) extending it until March 21, 2012.

By letter filed on March 13, 2012, the City of St. Charles (the City), on behalf of the Local Agencies, requests an extension of the NITU negotiating period¹ for an additional 180 days, until September 21, 2012.² The City indicates that it wishes to continue to work with local partner jurisdictions to compile specific information in efforts to satisfy the negotiating needs of

¹ The City's request does not distinguish between an extension of the public use condition and an extension of the trail use negotiation period under the NITU. Under 49 U.S.C. § 10905, a public use condition may not be extended beyond 180 days. Here, the public use condition expired in 2011. Accordingly, the City's request is construed as pertaining only to the trail use negotiating period under the NITU.

² An extension to that date would be 184 days in length. Although the request exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Union Pac. R.R.—Aban. Exemption—In Fulton & Peoria Cntys., Ill., AB 33 (Sub-No. 262X) (STB served June 20, 2011).

the parties and has been in contact with UP, but that it does not appear that the parties will be able to finalize negotiations by the March 21, 2012 deadline. In a letter filed on March 29, 2012, UP states that it is willing to extend the NITU negotiating period to September 21, 2012.

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 Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended until September 21, 2012.

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

It is ordered:

1. The request by the City to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to September 21, 2012.
3. The decision is effective on its service date.

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

³ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).