

SERVICE DATE – JUNE 20, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 262X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN FULTON AND PEORIA COUNTIES, ILL.

Decided: June 17, 2011

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 24.7-mile line of railroad on UP's Elm Industrial Lead from milepost 461.5, near Middle Grove, to milepost 486.2, at Molitor Junction, in Fulton and Peoria Counties, Ill. Notice of the exemption was served on July 23, 2008, and published in the Federal Register on July 28, 2008 (73 Fed. Reg. 43,823). By decision and notice of interim trail use or abandonment (NITU) served on November 13, 2008, the proceeding was reopened and a 180-day period was authorized for the Illinois Department of Natural Resources (IDNR) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. By a series of decisions issued from May 11, 2009, to December 14, 2010, the NITU negotiating period was extended until May 13, 2011.

On April 19, 2011, IDNR filed a letter requesting an extension of the NITU negotiating period until November 13, 2011.¹ IDNR states that it continues to work with local partner jurisdictions to compile specific information in an effort to satisfy its negotiating needs, and it has been in direct contact with UP, but it does not believe that the parties will be able to finalize negotiations during the current negotiating period. By letter filed on June 6, 2011, UP consents to IDNR's request to extend the NITU negotiating period until November 13, 2011.

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 to November 13, 2011.

¹ Although the request exceeds the customary request of 180 days (until November 9, 2011), the Board has granted such requests in the past. See e.g., S. Pac. Transp. Co.—Aband. Exemption—Wendel-Alturas Line in Modoc and Lassen Counties, Cal. AB 12 (Sub-No. 184X) (STB served Sept. 1, 2005).

² See Rail Aban.—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. IDNR's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until November 13, 2011.
3. This decision is effective on its service date.

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