

SERVICE DATE – APRIL 22, 2020

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: April 22, 2020

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. part 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 September 27, 2019, the NITU negotiating period has been extended, most recently until March 30, 2020.

On March 31, 2020, IDNR filed a letter requesting another 180-day extension of the NITU negotiating period. By letter filed on April 1, 2020, UP requests that, rather than 180 days, the Board extend the negotiating period for one year, until March 30, 2021, pursuant to the new rule adopted in Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019), regarding the number and duration of, and standard for granting, extensions of a NITU negotiating period. UP states that IDNR consents to the one year extension and further acknowledges that, if granted, the one year extension would be the additional year provided by the Board as a “transitional measure” in Docket No. EP 749 (Sub-No. 1).

Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); see also 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). Because the NITU was issued in 2008, it qualifies, under the Board's new rule governing NITUs, for the transitional one-year extension without a showing of extraordinary circumstances. See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al., slip op. at 11. The request for an extension of the NITU negotiating period until March 30, 2021, will be granted. However, under

the new rule, any further extension request will require a showing of extraordinary circumstances. See id.

It is ordered:

1. The request to extend the NITU negotiating period is granted; the negotiating period is extended until March 30, 2021.
2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.