

SERVICE DATE - APRIL 21, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-314 (Sub-No. 2X)

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN LINN COUNTY, IA

Decided: April 20, 2004

By decision and notice of interim trail use or abandonment (NITU) served on October 25, 2002, the Board granted Chicago Central & Pacific Railroad Company (CCP) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a segment of the Marion-Louisa Industry Lead, extending from milepost ZA 225.7 to milepost ZA 229.5, a distance of approximately 3.8 miles in Linn County, IA. The exemption was granted subject to trail use, public use, environmental, and standard employee protective conditions, and authorized a 180-day period for the City of Marion, IA (Marion), and the City of Cedar Rapids, IA (Cedar Rapids), to negotiate an interim trail use/rail banking agreement with CCP. The negotiating period under the NITU was scheduled to expire on April 25, 2003, but was subsequently extended by decisions served on April 23, 2003, and October 29, 2003, with the latest extension expiring on April 19, 2004.<sup>1</sup>

On April 12, 2004, Marion filed a request to extend the NITU negotiating period for an additional 180 days for that portion of the rail line within its corporate city limits. Marion states that negotiations remain suspended pending completion of the environmental assessment. Marion notes, however, that the contracts for the environmental assessment have been awarded, the project has begun, and the environmental assessment should be available within the next 6 months.

Also, on April 12, 2004, Cedar Rapids filed a request to extend the NITU negotiating period for an additional 180 days to continue negotiations for an interim trail use agreement.

By letters filed on April 12, 2004, and April 19, 2004, CCP states that it agrees with the requested extension of the negotiation period for the portion of the line between mileposts ZA 225.7 and ZA 228.45.

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<sup>1</sup> The decision served on April 23, 2003, modified the NITU to cover only that portion of the line between mileposts ZA 225.7 and ZA 229.1. The decision served on October 29, 2003, modified the NITU to cover only that portion of the line between mileposts ZA 225.7 and ZA 228.45.

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. Under the circumstances, an 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), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to October 16, 2004.

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

It is ordered:

1. The request to extend the interim trail use negotiating period for the portion of the line between mileposts ZA 225.7 and ZA 228.45 is granted.
2. The negotiating period under the NITU is extended to October 16, 2004.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary