

SERVICE DATE – DECEMBER 28, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 263X)

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

Decided: December 27, 2011

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon the Weber Industrial Lead (the Line) from milepost 5.8 near Wilson Avenue, Chicago, to milepost 9.5 near Touhy Avenue, in the Village of Skokie (Skokie), in Cook County, Ill., a distance of 3.7 miles. Notice of the exemption was served and published in the Federal Register on November 18, 2008 (73 Fed. Reg. 68,497). The exemption was scheduled to become effective on December 18, 2008.

The Board served a decision and notice of interim trail use or abandonment (NITU) in this proceeding on December 17, 2008, authorizing a 180-day period for: (1) the Village of Lincolnwood, Ill. (Lincolnwood) to negotiate an interim trail use/rail banking agreement with UP for a portion of the Line in Lincolnwood, extending from approximately milepost 8.4 at Devon Avenue to the border with Skokie, at approximately milepost 9.45 near Touhy Avenue, a distance of approximately 1.05 miles, and (2) the City of Chicago (the City), acting by and through its Department of Transportation, to negotiate an interim trail use/rail banking agreement with UP for the portion of the Line extending from milepost 5.8 near Wilson Avenue to the border with Lincolnwood at approximately milepost 8.4 near Devon Avenue, a distance of approximately 2.6 miles.¹

The negotiating periods under the NITU were scheduled to expire on June 16, 2009, but numerous extensions of the negotiating periods have been granted to allow Lincolnwood and the City to complete their trail plans and to continue negotiations with UP. The latest NITU extensions expired on December 3, 2011.

By letter filed on November 29, 2011, Lincolnwood requests an extension of the negotiating period for an additional 180 days, until May 31, 2012. Lincolnwood states that,

¹ The December 17 decision also imposed: (1) a self-executing environmental condition requiring UP, prior to commencing any salvage activities, to consult with the U.S. Army Corps of Engineers—Chicago District regarding potential permitting requirements under Section 404 of the Clean Water Act (33 U.S.C. § 1344); and (2) a public use condition which expired on June 16, 2009.

since the last extension, it has: (1) completed a wetlands inventory of the entire right-of-way, which indicated that there are no wetlands; and (2) received comments on its environmental survey request from the Illinois Department of Transportation (IDOT), which will be incorporated along with the request into the final Phase I Preliminary Engineering Report (Report). Lincolnwood further states that it is continuing to work with IDOT, the Federal Highway Administration (FHWA), and UP to produce all necessary plans, to obtain all necessary approvals, and to complete all required engineering and preparations for the proposed purchase and trail use. Lincolnwood anticipates submitting the Report to IDOT in December 2011, but does not expect IDOT to complete its review until spring or summer 2012, as which time the development of detailed construction plans and land acquisition procedures may commence. In a response filed on December 2, 2011, UP states that it is willing to negotiate with Lincolnwood and that it supports the extension request.

By letter filed on December 2, 2011, the City also requests an extension of the negotiating period until May 31, 2012. The City states that, since the last extension, the City's Department of Procurement Services and Department of Law reviewed and ultimately approved a contract for Phase I preliminary engineering and environmental studies compliant with FHWA standards and for real estate acquisition services under the U.S. Department of Transportation's guidelines. The City states that the studies will begin once IDOT approves the contract. In a response filed on December 6, 2011, UP states that it is willing to negotiate with the City, and that it supports the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating periods and is willing to continue trail use negotiations, the Board retains jurisdiction and may extend the NITU negotiating periods.² Under the circumstances, further extension of the negotiating periods 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 periods will be extended for 180 days, until May 31, 2012.

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

It is ordered:

1. The requests by Lincolnwood and the City to extend the NITU negotiating periods are granted.
2. The NITU negotiating periods are extended until May 31, 2012.

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

3. This decision is effective on the date of service.

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