

SERVICE DATE – APRIL 25, 2018

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 24, 2018

Union Pacific Railroad Company (UP) filed a verified 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. By a series of decisions issued from May 11, 2009, to October 2, 2017, the Board granted requests of IDNR, with consent from UP, to extend the NITU negotiating period, most recently to April 10, 2018.

On October 3, 2017, the National Association of Reversionary Property Owners (NARPO) filed a letter objecting to another extension of the NITU negotiating period. NARPO states that there are over 110 abutting property owners along the right-of-way and that the continued extensions are a detriment to them.

On March 26, 2018, IDNR filed a letter requesting another 180-day extension of the NITU negotiating period. IDNR states that it continues to work with local partner jurisdictions but “additional time to research and conduct various aspects of valuation is required with review by [UP].” IDNR further states that it does not believe that the parties will be able to finalize negotiations before the current negotiating period expires. By letter filed on March 29, 2018, UP consents to IDNR's request to extend the NITU negotiating period for an additional 180 days.

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. 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 these requirements have been met, the NITU negotiating period will be extended for an additional 180 days, from April 10, 2018, to October 7, 2018.

However, in light of NARPO's concerns, and given that almost 10 years have elapsed since abandonment was authorized, IDNR will be directed to provide more detailed information in the event it seeks to extend the NITU negotiating period further. Specifically, in any future extension request, IDNR will be required to describe in detail (1) the progress of its negotiations with UP since the last extension was granted, (2) the specific actions still needed to be taken before an agreement can be reached (including when those actions are expected to be completed), and (3) when (assuming the parties' further negotiations are successful) it expects an agreement with UP to be finalized.

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 October 7, 2018.
3. Any future requests to extend the NITU negotiating period shall include the detailed information described above.
4. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
5. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.