

SERVICE DATE – NOVEMBER 24, 2009

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: November 23, 2009

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 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, IL. Notice of the exemption was served on July 23, 2008, and published in the Federal Register on July 28, 2008 (73 FR 43823). 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 decision served on May 11, 2009, the NITU negotiating period was extended until November 8, 2009.

On November 2, 2009, IDNR filed a request for an extension of the NITU negotiating period until May 10, 2010.¹ IDNR states that it is continuing to compile information in an effort to satisfy its negotiations needs, and has been in direct contact with UP but does not believe that the parties will be able to finalize negotiations during the current negotiation period. By letter filed on November 4, 2009, UP consents to IDNR's request to extend the NITU.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, 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 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 May 10, 2010.

¹ Although the request exceeds the customary request of 180 days (until May 9, 2010), the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—Wendel-Alturas Line in Modoc and Lassen Counties, CA, Docket No. AB-12 (Sub-No. 184X (STB served Sept. 1, 2005)).

² See Rail Abandonments—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 May 10, 2010.
3. This decision is effective on its service date.

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