

SERVICE DATE – LATE RELEASE JUNE 18, 2009

SURFACE TRANSPORTATION BOARD

DECISION

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

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
COOK COUNTY, IL

Decided: June 18, 2009

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon the Weber Industrial Lead from milepost 5.8 near Wilson Avenue, Chicago, to milepost 9.5 near Touhy Avenue, Skokie, in Cook County, IL, a distance of 3.7 miles. Notice of the exemption was served and published in the Federal Register on November 18, 2008 (73 FR 68497). The notice was scheduled to become effective on December 18, 2008.

On December 17, 2008, a decision and notice of interim trail use or abandonment (NITU) was served in this proceeding authorizing a 180-day period for: (1) the Village of Lincolnwood, IL (the Village) to negotiate an interim trail use/rail banking agreement with UP for a portion of UP's Weber Industrial Lead located in the Village of Lincolnwood, from approximately milepost 8.4 at Devon Avenue to the border with the Village of Skokie, IL, at approximately milepost 9.45 near Touhy Avenue, a distance of approximately 1.05 miles; and (2) the City of Chicago, acting by and through its Department of Transportation (the City), to negotiate an interim trail use/rail banking agreement with UP for that portion of the Weber Industrial Lead from milepost 5.8 near Wilson Avenue to the border with the Village 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, 2009.²

¹ The December 17 decision also imposed a self-executing environmental condition requiring UP, prior to commencement of 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). A public use condition, also imposed there, expired on June 16, 2009.

² By decision served June 12, 2009, the negotiating period under the NITU was extended until December 13, 2009, in order for the Village to complete its trail plan and to continue negotiating with UP to a successful conclusion for the 1.05-mile segment of the Weber Industrial Lead between mileposts 8.4 and 9.45.

By letter filed on June 11, 2009, the City seeks an extension of the negotiating period for an additional 180 days, until December 13, 2009, for that portion of the line between mileposts 5.8 and 8.4. The City states that it needs additional time to secure funding, complete its engineering plan, and conclude negotiations with UP. In a response filed on June 15, 2009, UP states that it is willing to negotiate with the City and supports the extension request.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated the abandonment of the line, the Board continues to have jurisdiction to grant an extension. 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 for 180 days, until December 13, 2009 for that portion of the line between mileposts 5.8 and 8.4.

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

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended until December 13, 2009.
3. This decision is effective on the date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary