

SERVICE DATE – MAY 6, 2020

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: May 5, 2020

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. part 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, Ill., a distance of 3.7 miles (the Line). Notice of the exemption was served and published in the Federal Register on November 18, 2008 (73 Fed. Reg. 68,497). By decision and notice of interim trail use or abandonment (NITU) served on December 17, 2008, the proceeding was reopened, and a 180-day period was authorized for 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 the portion of the Line between milepost 5.8, near Wilson Avenue, and approximately milepost 8.4, near Devon Avenue, a distance of approximately 2.6 miles.¹ By a series of decisions issued from June 18, 2009, to October 30, 2019, the NITU negotiating period has been extended a number of times, most recently until April 20, 2020.²

On April 17, 2020, the City filed a request for a one-year extension of the NITU negotiating period for the segment between milepost 7.1 and milepost 8.4, to which UP consented by letter filed that same day.³ Because the NITU was originally issued in 2008, it

¹ In the same decision, a NITU was also issued to UP and the Village of Lincolnwood, Ill. (the Village) for the portion of the Line between approximately milepost 8.4 at Devon Avenue and approximately milepost 9.45 near Touhy Avenue, a distance of approximately 1.05 miles. On April 20, 2016, after a series of extensions to the negotiating period, UP filed a joint notice of trail use agreement between UP and the Village for the 1.05-mile segment.

² By letter filed on May 27, 2015, UP stated that the portion of the Line from milepost 5.8 near Wilson Avenue to milepost 7.1 near Bryn Mawr Avenue had been withdrawn from the abandonment authorization and would remain part of UP's railroad system. For that reason, subsequent extensions of the City's NITU have applied only to the segment of the Line between milepost 7.1 and milepost 8.4.

³ Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period

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qualifies, under the Board's new rule governing NITUs, for the transitional one-year extension without a showing of extraordinary circumstances. See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al., slip op. at 11 (STB served Dec. 4, 2019) (adopting final rule regarding the number and duration of, and standard for granting, extensions of a NITU negotiating period). Because the request is otherwise consistent with the new rule, and UP consents to the extension, the request for an extension of the NITU negotiating period until April 20, 2021, will be granted. However, under the new rule, any further extension request will require a showing of extraordinary circumstances. See id.

It is ordered:

1. The City's request for an extension of the NITU negotiating period is granted; the NITU negotiating period is extended until April 20, 2021.

2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

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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).