

SERVICE DATE – LATE RELEASE NOVEMBER 14, 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: November 14, 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). The Illinois Department of Natural Resources (IDNR) submitted a request for the issuance of a notice of interim trail use (NITU), and on November 13, 2008, a NITU was issued to allow the negotiation of an interim trail use/rail banking agreement with UP.

By a series of decisions issued from May 11, 2009, to April 24, 2018, the Board granted requests of IDNR, with consent from UP, to extend the NITU negotiating period, most recently until October 7, 2018. The Board's April 24, 2018 decision, which granted the most recent extension, also noted an October 2017 letter filed by the National Association of Reversionary Property Owners (NARPO) and directed IDNR to provide additional information if it sought to again extend the NITU negotiating period. Specifically, IDNR was asked to describe in detail the progress of its negotiations with UP, the specific actions still needed to be taken to reach an agreement, and when it expects an agreement with UP to be finalized.

On September 20, 2018, IDNR filed a letter requesting another 180-day extension of the NITU negotiating period. In its letter, IDNR states that during its recent negotiation period it requested that UP consider alternative acquisition strategies and is awaiting a response. According to IDNR, the following specific actions still need to be completed: appraisal updates, intergovernmental agreements with the Hanna City Trail Coalition, and final funding mechanisms. IDNR further states that it estimates that it will take one to one and a half years to complete negotiations. By letter filed on October 1, 2018, UP consents to IDNR's request to extend the NITU negotiating period for an additional 180 days.

On September 24, 2018, NARPO filed a letter objecting to the requested extension. NARPO expresses concern that more progress has not been made and suggests that the Hanna City Trail Coalition is the real negotiator for the NITU.

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, and because IDNR has provided the information requested in the April 24, 2018 decision, the NITU negotiating period will be extended for an additional 180 days, to April 5, 2019.

If IDNR seeks to further extend the NITU negotiating period, it must provide specific information showing substantial additional progress toward completing the outstanding items it identified in its most recent extension request. The Board would then consider such information in determining whether to grant any additional extensions.¹

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 April 5, 2019.
3. Any future requests to extend the NITU negotiating period shall include the 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.

¹ The Board recently proposed a rule limiting the number of 180-day extensions of NITU negotiating periods that may be granted. See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) (STB served Oct. 2, 2018). Comments on the proposed rule in that docket were due on November 1, 2018; reply comments are due on November 21, 2018.