

SERVICE DATE – MARCH 3, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 284X)

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

Decided: March 2, 2020

By decision and notice of interim trail use or abandonment (NITU) served on September 22, 2010, the Board granted an exemption permitting Union Pacific Railroad Company (UP) to abandon a 3.17-mile line of railroad known as the St. Charles Industrial Lead, extending from milepost 35.13 to the end of the line at milepost 38.30, near St. Charles, in Kane County, Ill. That decision also authorized a 180-day period for the County of Kane, Forest Preserve District of Kane County, St. Charles Park District, and the City of St. Charles, all municipal corporations, to negotiate an interim trail use/rail banking agreement with UP under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. By a series of decisions issued from March 18, 2011, to September 10, 2019, the NITU has been extended a number of times, most recently until February 15, 2020.

Effective February 2, 2020, the Board modified its rules regarding the number and duration of, and standard for granting, extensions of a NITU negotiating period (as well as the duration of an initial NITU negotiating period). See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019). Specifically, parties wishing to extend their negotiating period will be limited to three one-year extensions, absent a showing of “extraordinary circumstances.” Id., slip op. at 11. That change applies both to new NITUs requested on or after the rule’s effective date and to cases where a NITU was requested before the final rule took effect. Id. The Board’s decision, however, also provides that, “as a transitional measure, parties engaged in negotiations under an existing . . . NITU that was originally issued before February 2, 2017, may request **one** additional extension of one year, beyond the four-year anniversary of the issuance of the . . . NITU, *without showing extraordinary circumstances.*” Id. (italics added).

On February 12, 2020, the City of St. Charles filed a request to extend the NITU negotiating period until February 15, 2021. On February 14, 2020, UP consented to the requested extension. On the same day, the National Association of Reversionary Property Owners (NARPO) filed a comment opposing an extension, claiming “[t]he reasons put forth by the City . . . are not extraordinary.” (NARPO Comment 1.)

NARPO’s objection is without merit. Because the NITU was issued in 2010, it qualifies 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. 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 February 15, 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 request for an extension of the NITU negotiating period until February 15, 2021, is granted.
2. This decision is effective on its service date.

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