

Before the Surface Transportation Board

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February 17, 2017
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BNSF Railway Company -)
Abandonment Exemption -) AB 6 (Sub.no. 490X)
In King County, WA)

Action Requested by March 10, 2017

Fee waiver per 49 C.F.R. 1002.2(e)(1) (City of Seattle is a local government entity)

Motion for an Extension of NITU Negotiation Period

The City of Seattle ("City") moves for a 180-day extension in the negotiation period provide under the Notice of Interim Trail Use (NITU) in this proceeding served on September 17, 2015. The NITU negotiation period currently expires on March 10, 2017. The 180-day extension would expire on or about September 6, 2017. This is the third extension sought.

City is authorized to state that BNSF Railway ("BNSF"), per its counsel Mr. Morell, consents to this extension. See Appendix, attached.

Grounds for Extension

As stated in our first extension request, the Burke-Gilman Agreements provide for "railbanking" of the right of way

involved in this abandonment proceeding. It is the position of the City of Seattle that BNSF is legally obligated to transfer a 30-foot width of the line involved in this proceeding to the City pursuant to the Burke-Gilman agreements. The City continues to await BNSF's response to proposed contract language and legal descriptions of the property to be conveyed. The City understands that BNSF is also considering rail reactivation. In all events, it is appropriate for another extension of the NITU. If the NITU lapses, the City will contend that BNSF is subject to substantial damages for failure to discharge its obligations under the Burke-Gilman agreements.

It is well established that a NITU extension is appropriate in circumstances such as these:

"An extension of the negotiation period will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The purpose of the Trails Act is to preserve rail corridors for possible reactivation of rail service by permitting and encouraging their interim use as recreational trails. See Policy Statement on Rails to Trails Conversions, Ex Part No. 274 (Sub-no. 13B) (ICC served Feb. 5, 1990).

Wisconsin Central Ltd. - Abandonment Exemption - in Brown County, WI, AB 303 (Su-no. 20X), served Oct. 10, 2006. See also Consolidated Rail Corporation - Abandonment Exemption - in St. Joseph County, IN, AB 167 (Sub-no. 1165X), served Feb. 19, 1998.

Because the current NITU negotiation period otherwise ends on March 10, 2017, and BNSF has confirmed it does not anticipate

completion of its reviews before that date, City requests that the Board extend the NITU prior to that date in order to alleviate any jurisdictional issues. As already noted, counsel for BNSF has consented to the relief sought herein (attached Appendix).

By my signature below, undersigned counsel for City certifies service upon counsel for BNSF my USPS first class and by email as indicated in the "cc." on 17 February 2017.

Conclusion

For the reasons stated, the NITU negotiation period should be extended for 180 days through and including September 6, 2017.

Respectfully submitted,



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Att: Appendix (e-mail exchange)

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cc. Karl Morell
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(by USPS, first class, and
Email to karlm@karlmorell.com)

Appendix (on next page)

Subject: RE: South Ship Canal, NITU Extension, AB 6-490X
From: Karl Morell (karlm@karlmorell.com)
To: c.montange@frontier.com;
Date: Friday, February 17, 2017 7:33 AM

Charles, BNSF consents to the 180 day extension.

Karl

From: C. Montange [mailto:c.montange@frontier.com]
Sent: Thursday, February 16, 2017 1:48 PM
To: Karl Morell <karlm@karlmorell.com>
Subject: South Ship Canal, NITU Extension, AB 6-490X

Hello Karl. The current NITU expires on March 10. As the City sees it, BNSF is legally obligated to agree to an extension inasmuch as it has failed to enter into an agreement (or to respond to our property descriptions and contract language) yet. I will not be available to seek a timely extension after this Friday. Would you please provide me with a written consent to the 180 day extension (to Sept. 6) sought in the attached?