

SERVICE DATE – MARCH 24, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 482X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN COOK COUNTY,
ILL.

Decided: March 23, 2020

By decision and notice of interim trail use or abandonment (NITU) served on April 9, 2013, the Board granted an exemption permitting BNSF Railway Company (BNSF) to abandon an approximately 2.14-mile rail line in Cook County, Ill., subject to conditions. That decision also authorized a 180-day period for the City of Chicago, acting by and through the Chicago Department of Transportation (City), to negotiate an interim trail use/rail banking agreement with BNSF 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 20, 2014, to September 4, 2019, the NITU has been extended a number of times, most recently until February 19, 2020.

On February 26, 2020, the City filed a request to extend the NITU negotiating period until February 19, 2021.¹ On March 11, 2020, BNSF consented to the requested extension. Because the NITU was issued in 2013, it 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 BNSF consents to the extension, the request for an extension of the NITU negotiating period until February 19, 2021, will be granted. However, under the new rule, any further extension request will require a showing of extraordinary circumstances. See id.

¹ 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 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).

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 February 19, 2021.
2. This decision is effective on its service date.

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