

Before the Surface Transportation Board

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BNSF Railway Company -)

Abandonment Exemption -) AB 6 (Sub.no. 490X)

In King County, WA)

Action Requested by September 6, 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 provided under the Notice of Interim Trail Use (NITU) in this proceeding served on September 17, 2015. The NITU negotiation period currently expires on September 6, 2017. The 180-day extension would expire on or about March 5, 2018. This is the fourth extension sought.

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

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

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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. 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.

BNSF has informed the City that it is discussing a lease for continued rail purposes of a portion of the rail property at issue in this proceeding to a local industry (Coastal Transportation). The City does not oppose reasonable rail reactivation provided that the Board retains jurisdiction to railbank the property upon termination of the lease, if one is in fact entered. However, the property description for the portion of the property to be transferred to the City for railbanking and interim trail use cannot be determined until BNSF and the local industry complete their negotiations. BNSF today (August 31) advised the City that this process will require another 30 days. Only after that process is completed can railbanking discussions be finalized. Granting an extension of the NITU negotiation period in this situation may serve to facilitate not only preservation of the line for future rail use as well as trail use, but indeed also will sustain an industry interest in immediate rail use of a portion of the line. In all

events, it is necessary and prudent to extend the NITU for an additional 180 days.

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 September 6, 2017, and BNSF has today (August 31) confirmed that it has not completed discussions with local industry on the portion of the line on which current rail use may be continued, City requests that the Board extend the NITU without lapse in order to alleviate any jurisdictional issues. Although the time is brief, we respectfully request action on or by September 6. As already noted, counsel for BNSF has consented to the relief sought herein.

By my signature below, undersigned counsel for City certifies service upon counsel for BNSF by USPS first class and by email as indicated in the "cc." on 31 August 2017.

Conclusion

For the reasons stated, the NITU negotiation period should be extended for 180 days through and including March 5, 2018.

Respectfully submitted,

S/

Charles H. Montange
Attorney for The City of Seattle
Law Offices of Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
206-546-1936
Fax: -3739
Email: c.montange@frontier.com

Att: Appendix (e-mail exchange)

Of counsel: Engel Lee, Esq.
Seattle City Attorney's Office
Civil Division - Contracts & Utilities Section
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
Phone: 206-727-3979
Fax: 206-684-8284
Engel.Lee@seattle.gov

cc. Karl Morell
Karl Morell & Associates
655-15th St., NW, Suite 225
Washington, D.C. 20005
(by USPS, first class, and
Email to karlm@karlmorell.com)

Exhibit A

Subject: RE: AB 6-490X -- urgent
From: Karl Morell (karlm@karlmorell.com)
To: c.montange@frontier.com;
Date: Thursday, August 31, 2017 12:33 PM

BNSF does not oppose the extension request. The extension would run through March 5, 2018, not 2017.

Karl

From: C. Montange [mailto:c.montange@frontier.com]
Sent: Thursday, August 31, 2017 3:13 PM
To: Jill M. Rugema <jill.rugema@bnsf.com>; Karl Morell <karlm@karlmorell.com>
Subject: AB 6-490X -- urgent

Here is a NITU extension request which I would like to e-file at STB within the hour. It would help matters if one or the other of you would email me a note saying that BNSF agrees to/supports the extension requested, for that will facilitate the expedited treatment requested. Thanks.