

Before the Surface Transportation Board

245224

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

ENTERED
Office of Proceedings
February 26, 2018
Part of
Public Record

Action Requested by March 5, 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 March 5, 2018. The 180-day extension would expire on or about Saturday, September 1, 2018. This is the fifth extension sought.

City is authorized to state that BNSF Railway ("BNSF"), per its counsel Ms. Rugema, 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 recently (February 22) advised the City that it has preliminarily determined that it will reactivate rail service on the western portion of this line segment as far as Ewing Street. BNSF indicated that it was awaiting final internal approvals. Once that is obtained, it is City's understanding that the railroad will promptly take appropriate action at the Board, and also finalize a railbanking agreement with the City as to the

line segment east of Ewing Street, as required under the Burke Gilman agreements.

All these steps cannot now be completed prior to March 5, 2018, which is the expiration date of the current NITU extension. Granting a further extension of the NITU negotiation period in this situation will serve to facilitate not only preservation of the line for future rail use as well as trail use, but also 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 March 5, 2017, and BNSF has confirmed that it has not yet completed arrangements 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 March 5, 2018. 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 26 February 2018.

Conclusion

For the reasons stated, the NITU negotiation period should be extended for 180 days through and including September 1, 2018.

Respectfully submitted,

S/

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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)

Exhibit A

B 6-490X NITU Extension

[Rugema, Jill M <Jill.Rugema@BNSF.com>](mailto:Jill.Rugema@BNSF.com)

To [C. Montange](#)

CC [Karl Morell](#)

Today at 7:20 AM

Mr. Montange,

BNSF consents to the City of Seattle's request for a 180-day extension to the NITU negotiation period.

Jill Rugema

Asst. General Attorney

BNSF Railway

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