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SERVICE DATE – LATE RELEASE NOVEMBER 16, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 57 (Sub-No. 63X)

SOO LINE RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN COOK
COUNTY, ILL.

Decided: November 16, 2015

This decision reopens the proceeding, makes a Finding of No Significant Impact under 49 C.F.R. § 1105.10(g), denies a request for the issuance of a notice of interim trail use (NITU), and grants a request for the imposition of a public use condition.

Soo Line Railroad Company d/b/a Canadian Pacific (Soo Line) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 5,253 feet of railroad line between milepost 0.0 +/- (milepost 8.9 +/- on the Metra main line) and milepost 0.9 +/- at the intersection of Diversey Avenue in Chicago (Dunning Line), in Cook County, Ill. Notice of the exemption was served and published in the Federal Register on October 16, 2015 (80 Fed. Reg. 62,598). The exemption is scheduled to become effective on November 17, 2015.

Soo Line filed environmental and historic reports with its verified notice of exemption. The Board's Office of Environmental Analysis (OEA) examined the reports, verified their data, and analyzed the probable effect of the proposed action on the quality of the human environment. OEA served a draft Environmental Assessment (EA) on October 23, 2015. OEA did not receive any comments in response to the EA. A Final EA was issued on November 12, 2015. No environmental or historic preservation issues were raised by any party or identified by OEA. Accordingly, a Finding of No Significant Impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the EA, OEA states that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On November 10, 2015, the City of Chicago, Ill., (City) late-filed a request for the issuance of a NITU for the line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, to provide time to negotiate with Soo Line for acquisition of the right-of-way for use as a recreational trail and for rail banking. By response filed on November 13, 2015, Soo Line states that it does not intend to negotiate an agreement with the City for trails use. Under the Trails Act, the trails use program is voluntary and consensual between the railroad and the trail sponsor. See 49 C.F.R. § 1152.29; Citizens Against Rails to Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001); Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988); Rail Abans.—Use of Rights-of-Way as Trails, 2

I.C.C. 2d 591, 598 (1986). Because Soo Line does not consent to negotiate for interim trail use, the Board cannot issue a NITU, and the City's request for a NITU will be denied.

The City also requested imposition of a public use condition on November 10, 2015.¹ The City asks that Soo Line be prohibited, while the public use condition is in effect, from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms. The City states that portions of the line are located in proximity to important land uses, including Brickyard Shopping Center, Shriner's Hospital, UNO Charter School, and the corporate headquarters of toy manufacturer Radio Flyer. The City requests a 180-day public use condition because it has not had an opportunity to assemble or review title, appraisal, and environmental information, complete a trail plan, or commence negotiations with Soo Line.

The City's submission meets the requirements for a public use condition as set forth at 49 C.F.R. § 1152.28(a)(2). Soo Line has established: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the November 17, 2015 effective date of the exemption. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, Soo Line is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

It is ordered:

1. This proceeding is reopened.
2. Abandonment of the line will have no significant effect on the quality of the human environment or the conservation of energy resources or on historic resources.
3. The request for issuance of a notice of interim trail use is denied.

¹ The October 16, 2015 notice provided that any request for a public use condition under 49 C.F.R. § 1152.28 had to be filed no later than November 5, 2015. The City's request was filed on November 10, 2015. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because the City's public use condition request was filed sufficiently in advance of the effective date of the abandonment, the Board will still consider that request here. Soo Line states it opposes the City's request for imposition of a public use condition; however, the carrier's consent is not required to impose a public use condition. Minn. N. R.R.—Aban. Exemption—in Norman Cty., Minn., AB 497 (Sub-No. 4X), slip op. at 4 (STB served Dec. 3, 2008).

4. Upon reconsideration, the notice served and published in the Federal Register on October 16, 2015, exempting the abandonment of the line described above is modified to the extent necessary to permit public use negotiations for a period of 180 days commencing from the November 17, 2015 effective date of the exemption, until May 15, 2016, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use.

5. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.