

43393
DO

SERVICE DATE – FEBRUARY 27, 2014

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 6 (Sub-No. 487X)

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

Decided: February 26, 2014

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 1.1 miles of rail line, as follows: (1) approximately 0.50 miles of track (Sangamon Street Line) from south of Western Avenue Yard at 16th Street (Station 186+79), extending to the red board south of Cullerton Street (Station 163+50); and (2) approximately 0.60 miles of track (Lumber Street Line) from West Cermak Road at the Colonial Brick switch (Station 157+65), extending to the end of the line on Lumber Street (Station 197+81), in Chicago, Cook County, Ill. Notice of the exemption was served on March 1, 2013, and published in the Federal Register on March 6, 2013 (78 Fed. Reg. 14,622).¹ By decision and notice of interim trail use or abandonment (NITU) served on April 4, 2013 (April 2013 decision), the proceeding was reopened and a 180-day period was authorized for the City of Chicago (the City) to negotiate an interim trail use/rail banking agreement with BNSF for the right-of-way involved in this proceeding, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).² The trail use negotiating period under the NITU expired on October 1, 2013.

On September 30, 2013, the City submitted a motion to extend the NITU negotiating period for the right-of-way in this proceeding for an additional 180 days, or through March 30, 2014. The City states that additional time is needed to complete interim trail use negotiations. In a response filed on October 24, 2013, BNSF states that it does not object to the extension of the NITU, but only for the rail lines located: (1) between Station 185+77 and Station 163+50; and (2) between Station 157+65 and Station 197+81. BNSF is not agreeable to an extension of the NITU for the portion of the rail lines located between Station 186+79 and Station 185+77.

¹ The exemption became effective on April 5, 2013.

² The April 2013 decision also imposed a public use condition and an environmental condition. The public use condition expired on October 2, 2013, and by statute cannot be extended. The environmental condition remains in effect, but it is not a barrier to BNSF's consummation of the abandonment of the line.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for a portion of the line and is willing to continue trail use negotiations for that portion of the line, the Board retains jurisdiction, and the NITU negotiating period may be extended.³ Under the circumstances, further extension of the negotiating period is warranted. See 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). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended only for rail lines located: (1) between Station 185+77 and Station 163+50; and (2) between Station 157+65 and Station 197+81 for an additional 180 days, from October 1, 2013, to March 30, 2014. The NITU for the segment between Station 186+79 and Station 185+77 is vacated. See 49 C.F.R. § 1152.29(d)(2).

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on April 4, 2013, is modified, and the NITU for the segment of the right-of-way between Station 186+79 and Station 185+77 is vacated.
3. The City's request to extend the NITU negotiating period is granted in part, as discussed above.
4. The negotiating period under the NITU is extended only for rail lines located: (1) between Station 185+77 and Station 163+50; and (2) between Station 157+65 and Station 197+81, until March 30, 2014.
5. This decision is effective on its service date.

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

³ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).