

SERVICE DATE – MAY 8, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 57 (Sub-No. 61X)

SOO LINE RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN RACINE
COUNTY, WIS.

Decided: May 7, 2020

Soo Line Railroad Company, d/b/a Canadian Pacific, (Soo Line) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon 10.63 miles of rail line approximately between milepost 7.8 and milepost 18.43 in Racine County, Wis. (the Line). Notice of the exemption was served and published in the Federal Register on February 14, 2014 (79 Fed. Reg. 9042).

By decision and notice of interim trail use or abandonment (NITU) served on March 18, 2014, the proceeding was reopened, and a 180-day period was authorized for the Wisconsin Department of Natural Resources (WDNR)¹ to negotiate an interim trail use/rail banking agreement with Soo Line for the right-of-way. By a series of decisions issued from September 17, 2014, to November 6, 2019, the NITU negotiating period has been extended, most recently until May 5, 2020.

On May 4, 2020, WDNR requested that the Board extend the NITU negotiating period for one year, until May 5, 2021. On May 5, 2020, Soo Line submitted a letter consenting to continued negotiations.² Because the NITU was issued in 2014, 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 Soo Line consents to the extension, the request for an extension of the NITU negotiating period until May 5, 2021, will be

¹ Although the March 2014 decision issued the NITU to the Wisconsin Department of Transportation (WDOT), WDOT had requested the NITU on behalf of WDNR and the statement of willingness to accept financial responsibility for the right-of-way was signed by WDNR.

² 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).

granted. However, under the new rule, any further extension request will require a showing of extraordinary circumstances. See id.

It is ordered:

1. The request to extend the NITU negotiating period is granted; the negotiating period is extended until May 5, 2021.
2. This decision is effective on its service date.

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