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SERVICE DATE – JULY 28, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 493X)

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

Decided: July 28, 2021

By decision served on August 19, 2016, the Board, pursuant to 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by BNSF Railway Company (BNSF) of an approximately 0.89-mile rail line on BNSF's Lumber District Lead beginning just west of Laflin Street at Engineering Station 118+00 and proceeding east along West Cermak Road to the most easterly point at Engineering Station 157+65 and heading north along the Sangamon Street Lead at Engineering Station 163+50, including both legs of the wye, in Chicago, Cook County, Ill. (the Line).

In a decision served on November 23, 2016, the Board granted a late-filed a request by the City of Chicago, acting by and through its Department of Transportation (the City), for the issuance of a notice of interim trail use or abandonment (NITU) to negotiate with BNSF for acquisition of the Line as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. The NITU negotiating period has been extended several times, most recently until March 6, 2022. However, on July 1, 2021, the City filed a motion to terminate the NITU in order to allow BNSF to consummate abandonment. The City states that it has entered into discussions with BNSF that are “likely to result in a conveyance of the [Line] without the need for railbanking.” (City Mot. 1.) The City's request will be granted.

Under the Trails Act, interim trail use negotiations are voluntary and consensual between the railroad and the trail sponsor. Rail Abans.—Use of Rights-of Way as Trails, 2 I.C.C.2d 591, 598 (1986); Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C Cir. 1988). Here, the City no longer wishes to negotiate for acquisition of the Line for use as a trail under the Trails Act. Therefore, it would be inappropriate to keep the NITU in place. Accordingly, the NITU issued in the November 23, 2016 decision will be vacated.

This decision, and the proposed abandonment if implemented as conditioned,¹ will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU issued in the November 23, 2016 decision is vacated.
3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

¹ Two environmental conditions related to salvage of the Line remain in effect. See BNSF Ry.—Aban. Exemption—in Cook Cnty., Ill., AB 6 (Sub-No. 493X) (STB served Nov. 1, 2016).