

via electronic filing

July 2, 2019

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Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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July 2, 2019
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Re: STB Docket Nos. EP 749 (Sub-No. 1), Limiting Extensions of Trail Use Negotiating Periods, and EP 753, Rails-to-Trails Conservancy – Petition for Rulemaking

Dear Ms. Brown:

In a decision served on June 6th, the Board consolidated the two proceedings listed above because, among other reasons, both concern the same regulation regarding extension of interim trail use negotiation periods. That decision also functioned as a Supplemental Notice of Proposed Rulemaking (“SNPRM”) in that the Board revised the rule change previously proposed in a Notice of Proposed Rulemaking (“NPRM”) served on October 2, 2018 in Ex Parte No. 749 (Sub-No. 1). The Missouri Central Railroad Company (“MCRR”) previously provided comments to the Board in response to both the NPRM and the later Petition for Rulemaking filed in Ex Parte No. 753.¹

MCRR would like to briefly comment upon the Board’s revision to the proposed rules, as described in the SNPRM on June 6th. MCRR is appreciative of the Board’s effort in adapting the previously-proposed rules to take into account the various concerns expressed in comments thus far in the two proceedings. MCRR also agrees with the use of a one-year duration as the initial trail use negotiation period, as proposed in the SNPRM.²

In its prior comments in Ex Parte No. 749 (Sub-No. 1), MCRR expressed its view that an explicit regulatory limitation on the number negotiating extensions, absent “extraordinary circumstances,” would run counter to the Congressional policy favoring rail-banking, and would be an overly imprecise “one-size-fits-all” approach that ignores the great diversity of rail corridors that may be subject to negotiation. MCRR also explained that such a rule is unnecessary given that the Board already can and does evaluate each extension request on its individual merits. Although this remains MCRR’s view regarding the creation of an explicit regulatory limitation on the number of negotiating extensions, MCRR understands the desire for finality and resolution that underpins the proposed limitation. In the SNPRM, the Board proposed that each trail use negotiating period be limited to no more than three one-year

¹ See MCRR letter in Ex Parte No. 749 (Sub-No. 1) (filed Nov. 1, 2018) and MCRR letter in Ex Parte No. 753 (filed April 11, 2019).

² SNPRM at 9.

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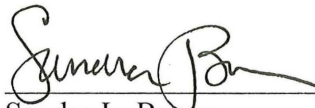
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extensions, absent “good cause” and the willingness of the railroad and trail sponsor to continue negotiating.³

MCRR agrees that a “good cause” standard is more appropriate than an “extraordinary circumstances” standard given the Congressional policy favoring rail-banking. Under the “good cause” standard, MCRR believes that the “not favored” language in the SNRPM is an unnecessary limitation. Under the good cause standard the Board can carefully evaluate the circumstances surrounding each extension request and the subject rail corridor when determining whether “good cause” has been shown. Each rail corridor is different. Some corridors proposed for trail use are simple, extremely short, and have no complicating factors. Others may extend for a hundred miles or more and include a wide variety of complicating factors. Therefore, when the subject rail corridor is extremely long, passes through multiple local government jurisdictions, and has complications such as historic, environmental, salvage, or funding issues to overcome, the Board should find it relatively easy to determine that “good cause” has been shown.

MCRR appreciates the STB’s continuing careful consideration of trail use negotiating periods in these two consolidated dockets.

Sincerely,



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³ SNPRM at 9. The prior proposal was for no more than six 180-day extensions absent “extraordinary circumstances.” See SNPRM at 2.
