

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-1068 (Sub-No. 3X)

ENTERED
Office of Proceedings
January 28, 2019
Part of
Public Record

MISSOURI CENTRAL RAILROAD COMPANY
- ABANDONMENT EXEMPTION -
IN CASS, PETTIS, BENTON, MORGAN, MILLER, COLE, OSAGE, MARIES,
GASCONADE, AND FRANKLIN COUNTIES, MISSOURI

MOTION TO EXTEND TIME TO NEGOTIATE INTERIM TRAIL USE
AND FEE WAIVER REQUEST

The Missouri Department of Natural Resources (“MDNR”) hereby requests, and the Missouri Central Railroad Company (“MCRR”) hereby agrees to, an 180-day extension of time for the Notice of Interim Trail Use (“NITU”), or **until August 20, 2019**, applicable to the rail line in the above-referenced abandonment proceeding.¹ Under the decision served by the Surface Transportation Board (“Board”) on January 19, 2018, the current period for negotiation of interim trail use/rail banking is set to expire on February 21, 2019.

MDNR and MCRR have previously informed the Board that the parties intended to wait until salvage was finished before completing their interim trail use agreement negotiations and executing the applicable Interim Trail Use Agreement (“ITUA”).² Salvage began in late 2015 on the 144.3-mile rail line at issue in this proceeding. The salvage process was a complicated endeavor for a wide variety of reasons, including the length of the rail line, the need to document

¹ See, e.g., West Michigan Railroad Company – Abandonment Exemption – In Van Buren County, Mich., STB Docket No. AB-1107X, slip op. at 2 (served April 15, 2014) (“Where...the carrier has not consummated the abandonment at the end of the previously imposed negotiating period...and is willing to continue trail use negotiations...the Board retains jurisdiction, and the NITU negotiating period may be extended.”) (citation omitted). This case also provides precedent on the retention of the STB’s jurisdiction on the corridor and the Board issuance of the NITU extension even after February 21, 2019, in the event that the government shut down continues and the Board is not able to enter a decision before the February 21st date.

² See Motion to Extend Time (filed November 30, 2016).

FILING FEE WAIVED

the rail line as required by the National Historic Preservation Act (“NHPA”) and the applicable Section 106 Memorandum of Agreement (“MOA”), the need to comply with various environmental conditions imposed in this proceeding and the National Environmental Policy Act (“NEPA”), and required consultation with various governmental and other entities.³

Salvage is now complete. Although MDNR and MCRR have made substantial progress in negotiating the terms of trail use and are meeting weekly, they have not yet executed an ITUA. Therefore, MDNR and MCRR are requesting an 180-day extension of the negotiating period with this filing.

MDNR and MCRR recognize that the Board recently issued a Notice of Proposed Rulemaking (“NPRM”) in Ex Parte No. 749 (Sub-No. 1) that proposed to adopt a new rule that would limit the number of extensions of a trail use negotiating period to six 180-day extensions, absent “extraordinary circumstances.”⁴ In the NPRM, the Board also proposed that the new rule, if adopted, would apply not just to new trail use requests, but also to those currently being negotiated.⁵ The Board proposed such broad applicability because “parties have no vested right to a newly requested extension of the negotiating period” and “[e]ach extension request is considered on its own merits.”⁶ A variety of comments were filed in response to the NPRM, but the Board has not yet determined whether to adopt the proposal described therein.

³ See, e.g., decisions served January 6, 2015, August 11, 2015, and September 23, 2015 in this docket (imposing environmental conditions and consultation requirements, and also referring to the MOA requirements).

⁴ See Limiting Extensions of Trail Use Negotiating Periods, STB Docket No. EP 749 (Sub-No. 1) (served October 2, 2018).

⁵ See NPRM at 8.

⁶ NPRM at 8 (n. 7).

As the Board knows, MCRR filed comments in EP 749 (Sub-No. 1), expressing opposition to the proposed rule for numerous reasons.⁷ MCRR remains opposed to the proposal in the NPRM, though MCRR will not repeat its concerns about the proposed rule. Instead, this Motion to Extend Time focuses on the particular details of the 144-mile rail corridor that is the subject of the NITU. At the outset, it remains unclear whether the proposed rule would apply to the right-of-way at issue in this proceeding because there have only been **four** extensions to date, albeit three of them were for one-year negotiating periods.⁸ Based on the plain language of the proposed rule, MDNR and MCRR assert that the rule, even if enacted, and it is not, does not apply to the corridor in this proceeding because MDNR has not been granted six or more extensions.

Nevertheless, given the uncertainty about if and when the Board will issue a decision in the rulemaking proceeding, including, importantly, the possibility that the new rule, if adopted, would apply to existing trail use negotiations, MDNR and MCRR will use the remainder of this Motion to Extend Time to show that, even under the standard enunciated in the NPRM, an extension of negotiating time is warranted in this case. MDNR and MCRR make this showing out of an abundance of caution, given the importance of preserving rail corridors for future use.

The circumstances surrounding the rail corridor at issue in this proceeding confirm that the extension request should be granted even though approximately four years have passed since the initial NITU. Extreme complexity is and has been inherent in the process of rail-banking the MCRR corridor. Most obviously, the corridor extends for over 144 miles in two separate segments, which is far longer than virtually all other rail-banking requests – some of which are

⁷ See MCRR Comments in Ex Parte No. 749 (Sub-No. 1) (filed November 1, 2018).

⁸ Extensions were granted on August 10, 2015, February 19, 2016, December 23, 2016, and January 19, 2018.

as short as one mile or less. Extensive documentation of the entire rail line was required under Section 106 of the NHPA and the resulting MOA because it was determined that the rail line was likely eligible for inclusion in the National Register of Historic Places.⁹ The corridor includes tunnels, bridges, and innumerable culverts, thus adding complexity to the documentation requirement.

The corridor also traverses ten counties, numerous small cities, and countless settlements, thereby complicating planning and outreach efforts. Additionally, since the initial NITU was issued, MDNR has been performing due diligence activities, including conducting an environmental assessment and visual inspection of the corridor, development of cost projections and risk assessments, title review, hosting public meetings in communities along the corridor, and collecting public comments online. The size and complexity of the corridor adds to the significant undertaking for trail sponsorship, and it is essential that MDNR understand the immediate and long term liabilities, costs, benefits and opportunities involved. Finally, trail sponsorship has faced the challenge of dealing with three different Missouri governors in the four years since the Board issued the NITU in 2015. In particular, each new administration has needed time to be briefed on the project and time to understand the trail planning and ITUA negotiation.

As shown above, extraordinary circumstances apply to the railbanking process surrounding the MCRR rail corridor, and an extension is warranted even under the standard described in the proposed rule from the NPRM. An extension is all the more warranted because the Board has suggested that it may apply a more “liberal” standard when evaluating requested

⁹ See STB decision, slip op. at 2 (served Jan. 6, 2015).

extensions for proceedings that were ongoing at the time the new rule (if adopted) becomes effective.¹⁰

The extension requested herein comports with the “national policy to preserve established railroad rights-of-way for future reactivation of rail service.”¹¹ The importance of preserving existing rights-of-way is more important with each passing day as the U.S. population continues to grow, thereby creating land development pressures yet also indicating that future rail use may be needed. The importance of this corridor that crosses the state of Missouri, cannot be understated.

MCRR has not consummated the abandonment of the right-of-way covered by this proceeding, and the right-of-way remains subject to STB jurisdiction. MCRR remains committed to transferring the property to MDNR under the National Trails System Act, 16 USC § 1247(d).¹² MDNR and MCRR intend to continue working towards the goal of signing an ITUA in the near future, if mutually agreeable terms can be reached. Such an agreement would likely entail closing and transfer of the property once certain conditions precedent have been fulfilled. MDNR and MCRR would notify the Board both upon execution of the ITUA and also upon transfer of the property. This sort of two-stage process has been previously utilized for rail-banking.¹³

Pursuant to 49 CFR § 1002.2(e)(1) and MDNR’s status as a state agency, it is requesting waiver of the \$500.00 filing fee for extension of the period of time to negotiate a trail use agreement.

¹⁰ See NPRM at 8.

¹¹ 16 USC § 1247(d).

¹² If for some reason, MDNR and MCRR do not reach an agreement, MCRR is willing to enter an ITUA agreement with another trail sponsor pursuant to the National Trails System Act.

¹³ See, e.g., Sunflower Rails-Trails Conservancy, Inc. – Petition for Declaratory Order – Sale of Railbanked Right-of-Way, STB Docket No. 36034, slip op. at 2 (served Feb. 23, 2017).

Respectfully submitted,



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January 17, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of January 2019, I caused a copy of the Missouri Department of Natural Resources and Missouri Central Railroad Company's Motion to Extend Time to Negotiate Interim Trail Use and Fee Waiver Request to be served upon all parties of record below, by first-class mail:

Honorable Vicky Hartzler
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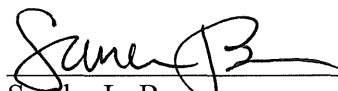
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