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RECEIVED
APR 11 2007

Illinois Commerce Commission
RAIL SAFETY SECTION

Re: City of Farmington v. Burlington Northern Santa Fe Railroad
Illinois Commerce Commission
Case no. T07-0024

Gentlemen:

Forwarded herewith please find copies of Surface Transportation Board decisions with service dates of August 6, 2006, August 11, 2006, September 1, 2006 and January 17, 2007 entered in STB docket no. AB-6(sub-no. 431X). BNSF Railway Company may offer the aforesaid documents as BNSF Exhibits 1 - 4, respectively at time of public hearing in the above captioned cause.

Very truly yours,



Michael L. Sazdanoff
MLS/ret

Enclosure

DOCKETED

APR 12 2007

37215

SERVICE DATE – AUGUST 4, 2006

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-6 (Sub-No. 431X)]

BNSF Railway Company—Abandonment and Discontinuance Exemption—in Knox and
Fulton Counties, IL

BNSF Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Services to: (1) abandon a 1-mile line of railroad between milepost 51.58 and milepost 52.58 near Farmington, in Fulton County, IL; and (2) discontinue service over a 4.69-mile line of railroad between milepost 46.89 near Yates City, and milepost 51.58 near Farmington, in Knox County, IL, a total distance of 5.69 miles. The line traverses United States Postal Service Zip Codes 61531 and 61572.

BNSF has certified that: (1) no traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 5, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 14, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 24, 2006, with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each OFA must be accompanied by the filing fee, which was increased to \$1,300 effective on April 19, 2006. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

A copy of any petition filed with the Board should be sent to BNSF's representative: Sidney L. Strickland, Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, N.W., Suite 101, Washington, DC 20007.

If the verified notice contains false or misleading information, the exemption is void ab initio.

BNSF has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 11, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by August 4, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: August 1, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

37216
SEA

SERVICE DATE – AUGUST 11, 2006

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

ENVIRONMENTAL ASSESSMENT

STB DOCKET NO. AB-6 (Sub-No. 431X)

**BNSF Railway Company - Abandonment and Discontinuance Exemption -
in Knox and Fulton Counties, IL**

BACKGROUND

In this proceeding, BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of a one-mile line of railroad between milepost 51.58 and milepost 52.58 near Farmington, in Fulton County, Illinois, and the discontinuance of service over a 4.69-mile line of railroad between milepost 46.89 near Yates City and milepost 51.58 near Farmington, in Knox County, Illinois.¹ A map depicting the rail line in relationship to the area served is appended to the Environmental Assessment (EA). If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and dispose of the right-of-way.

ENVIRONMENTAL REVIEW

BNSF submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. BNSF served the environmental report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 CFR 1105.7(b)].² The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

¹ The line proposed for abandonment and the line proposed for discontinuance will be referred to in this Environmental Assessment as "the line."

² The railroad's environmental and historic reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB-6 (Sub-No. 431X).

Diversion of Traffic

BNSF states that no local traffic has moved over the line for at least two years and there is no overhead traffic to be rerouted. Accordingly, the proposed abandonment would not adversely impact the development, use, and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

Salvage Activities

As part of the proposed abandonment, BNSF states that it may salvage all rail and ties from the line, but the roadbed will be left intact. There are no bridges or other structures on the line proposed for abandonment. There is one bridge and one tunnel located on the line proposed for discontinuance; however, the proposed discontinuance will have no effect on those structures because BNSF will continue to utilize this rail segment to store railcars. BNSF further states that there would be no dredging or discharge of fill material into navigable waters, and there would be no discharge of any pollutant.

The line extends from Yates City to Farmington, and the adjoining land is generally flat. The area is primarily used for agricultural purposes, and major crops include corn and soybeans. In addition, some of the land to the east of the right-of-way has been strip mined. The right-of-way is 50 to 160 feet in width, and the proposed abandonment would allow for the elimination of three public crossings and one private crossing.³ BNSF states that, during salvage operations, it will take precautions to ensure public safety and contractors will be required to satisfy all applicable health and safety laws and regulations.

The Natural Resources Conservation Service (NRCS) submitted comments stating that the proposed abandonment will have no effect on prime agricultural lands in Fulton County or Knox County. Accordingly, no mitigation measures were recommended by NRCS.

The Knox County Highway Department submitted comments stating that the proposed project does not appear to be located in a 100-year flood plain. Accordingly, no mitigation measures were recommended.

The National Park Service (NPS) reviewed the proposed project and stated that there are no conflicts with the Land and Water Conservation Fund program or the Urban Park and Recreation Recovery program. Accordingly, no mitigation measures were recommended by NPS.

³ There are four public crossings and two private crossings on the line proposed for discontinuance.

The Bureau of Land Management (BLM) stated that there are no federal lands administered by BLM along the rail line. However, BLM indicated that some of the original railroad line grants were "limited fee" rights-of-way⁴ and may be subject to federal laws such as the National Trails System Improvement Act. SEA notes that BNSF has indicated that there are no federally granted rights-of-way within the rail corridor. No mitigation measures were recommended by BLM.

BNSF states that the proposed project does not lie adjacent to any wildlife sanctuaries or refuges, National or State Parks or Forests. The Illinois Department of Natural Resources (IDNR) has indicated that the proposed project is in proximity to IDNR Conservation Areas but is not adjacent to public land holdings held by the State of Illinois. No mitigation measures were recommended.

BNSF states that the proposed project does lie adjacent to wetlands or stream areas considered to be wetlands. However, IDNR has stated that, given the nature of the existing railroad, the proposed abandonment would not pose a threat. Moreover, the U.S. Fish and Wildlife Service, Region 3, has indicated that it does not have any concerns with the proposed abandonment and discontinuance. No mitigation measures were recommended.

The U.S. Environmental Protection Agency, Region 5 (USEPA), provided a number of comments regarding the proposed abandonment and discontinuance. The USEPA has no significant concerns, provided certain matters are addressed. First, USEPA recommended that BNSF consult with the Illinois Environmental Protection Agency's Division of Water Pollution Control (Illinois EPA) and the U.S. Army Corps of Engineers (Corps) in order to determine whether any permits are necessary. Illinois EPA has reviewed the proposed abandonment and determined that no permit is required pursuant to Section 401 or Section 402 of the Clean Water Act or the National Pollutant Discharge Elimination System. The Illinois EPA further stated that a stormwater general permit would only be required where the construction activity disturbs one acre of land or more. The Corps' Rock Island District submitted comments stating that a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. 1344) would not be required.

USEPA has requested the following: rails, crossties, and any debris be appropriately disposed and not left in streams, wetlands, or the banks of such waterways; recycling of rail materials be addressed and documented; crossties treated with creosote be buried in a non-hazardous waste landfill unless otherwise required by the State of Illinois, pursuant to the Rebuttable Presumption Against Registration under the Federal Insecticide, Fungicide, and Rodenticide Act; appropriate measures should be taken to prevent or control spills from fuels, lubricants, or any other pollutants from entering any watercourses; and noise and air pollution be minimized during salvage activities. In addition, USEPA requested that precautions, beyond the general "best practices," be

⁴ As opposed to ownership in "fee simple," which allows unlimited control over a property.

taken to assure protection of the West Fork Kickapoo Creek. USEPA suggested the following measures: no staging or piling of materials in runoff areas and avoiding incidental spills, dumping, discarding debris, and damage to area flora. We will recommend that a condition be imposed requiring BNSF to comply with USEPA's *specific recommendations pertaining to salvage activities on this proposed project.*

Finally, USEPA requested that the Board address the potential redevelopment or future use of the right-of-way; maintenance of culverts, other structures, and vegetation; and the relationship of this right-of-way in relation to contiguous sections of track. However, it is well settled that in conducting environmental review in abandonment cases, the Board's role is limited to the anticipated impacts of the abandonment proposal before the agency, e.g., the likely diversion of traffic to other lines or transportation modes and the likely disruptive consequences of removing the track and related structures. Iowa Southern R. Co. – Exemption - Abandonment, 5 I.C.C.2d 496, 501(1989), aff'd, Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990). Moreover, in the event that abandonment authority is granted and BNSF fully abandons the line, the Board loses jurisdiction over the property. See Hayfield Northern v. N.R.R. v. Chicago & N.W. Transp. Co., 622, 633 (1984). Accordingly, SEA does not recommend environmental conditions regarding the post-abandonment use of the right-of-way, and it would not be appropriate or consistent with Board precedent for SEA to recommend a condition regarding responsibility for redevelopment or maintenance of the right-of-way.

BNSF states that it is not aware of any hazardous waste sites or sites where there have been hazardous material spills on the right-of-way. SEA conducted a search of US Environmental Protection Agency's Toxics Release Inventory database at www.epa.gov/tri/#whatistri, and the database did not contain any information regarding toxic chemical releases or other waste management activities in the area of the proposed project.

Additional Comments

BNSF states that the right-of way may be suitable for alternative public use, and there is strong local interest in railbanking this right-of-way. IDNR has stated that the proposed abandonment is highly regarded as a potential rail-trail and it will assist in the effort to railbank the subject right-of-way. Given its interest in railbanking the corridor, IDNR would oppose the removal of any bridges or structures. However, IDNR supports salvage of rails, ties, and other non-structural railroad materials.

The Fulton County Board (Fulton County) has reviewed the proposed project and has expressed interest in railbanking the line because it would: preserve greenways; allow for recreational and transportation uses; provide a utility corridor; and maintain the right-of-way for future use as a railway. Accordingly, Fulton County states that it supports the efforts of IDNR to negotiate a railbanking agreement with BNSF. The Illinois Department of Transportation stated that it is not aware of any proposed projects on this line, other the above mentioned comments submitted by Fulton County. The requirements for public use and trail use are discussed below.

The National Trails System Act and the Board's Environmental Review

The National Trails System Act (Trails Act), 16 U.S.C. 1247(d), gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad right-of-way that otherwise would be abandoned. The Trails Act is intended to preserve railroad rights-of-way for future railroad use.

Under the Trails Act and the Boards implementing procedures (49 CFR 1152.29), a state or local government or private organization can request a trail condition (known as a Certificate of Interim Trails Use (CITU)) This process allows railroad rights-of-way to be preserved by allowing interim trail use on lines that otherwise would be abandoned. In exempt abandonment procedures, it is a notice of interim trails use (NITU) that is issued rather than a CITU to begin the trail use process on a line approved for abandonment if the rail sponsor agrees to railbanking and provides a statement of willingness to assume responsibility for managing the right-of-way, for any legal liability arising out of its use, and for the payment of taxes. If the railroad agrees to negotiate, and no offer of financial assistance to continue rail freight service on the line is received, the Board imposes a NITU, which gives the rail sponsor time to negotiate an agreement with the railroad for interim trail use/railbanking. The Board has no involvement in the negotiations and does not analyze, approve, or set the terms of trail use agreements. The Board is not authorized to regulate activities over the actual trail. In short, the Boards' jurisdiction under the Trails Act is ministerial.

The Board does not conduct an environmental review of a potential conversion to interim rail use/railbanking because it does not exercise sufficient Federal control so as to qualify as a major Federal action under NEPA. Only major actions by Federal agencies require environmental review.

Based on all information available to date, SEA does not believe that salvage activities would cause significant environmental impacts. SEA is providing a copy of this EA to the following agencies for review and comment: USEPA; IDNR; and Fulton County.

HISTORIC REVIEW

BNSF submitted the historic report to the Illinois Historic Preservation Agency (the State Historic Preservation Office or SHPO), pursuant to 49 CFR 1105.8(c). According to BNSF, there are no railroad structures on the property that are 50 years old or older. The SHPO has reviewed the proposed project and determined that no historic properties would be affected. Accordingly, the SHPO has no objection to the undertaking. We have reviewed the report and the information provided by the SHPO and concur with the SHPO's comments.

Pursuant to the Advisory Council on Historic Preservation's regulations for implementing the section 106 process of the National Historic Preservation Act at 36

CFR 800.4(d) and 36 CFR 800.8, we have determined that the proposed abandonment will not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 CFR 800.11(d), consists of the railroad's historic report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public.

SEA also conducted a search of the Native American Consultation Database at <http://www.nps.gov/nacd/> to identify federally recognized tribes that may have ancestral connections to the project area. The database indicated that the following tribes may have an interest in the proposed abandonment: Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Peoria Tribe of Indians of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Citizen Potawatomi Nation, Oklahoma; and Prairie Band of Potawatomi Nation, Kansas. Accordingly, SEA is sending a copy of this EA to these tribes for their review and comment.

CONDITIONS

SEA recommends that the following environmental condition be placed on any decision granting abandonment authority:

1. Based on the recommendations of the U.S. Environmental Protection Agency, Region 5, BNSF Railway Company shall conduct salvage activities in the following manner: recycle or appropriately dispose of rails, crossties, debris, and any other structures or materials and avoid leaving such materials in streams, wetlands, or the banks of such waterways; appropriately dispose of any crossties treated with creosote; take appropriate measures to prevent or control spills from fuels, lubricants, or any other pollutants from entering any watercourses; and take measures to minimize noise and air pollution during salvage activities. In order to protect the West Fork Kickapoo Creek, BNSF should avoid staging or piling of materials in runoff areas and avoid incidental spills, dumping, discarding debris, and damage to area flora.

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this EA, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Christa Dean who prepared this EA. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-6 (Sub-No. 431X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this EA, please contact Christa Dean the environmental contact for this case, by phone at (202) 565-1606, fax at (202) 565-9000, or e-mail at deanc@stb.dot.gov.

Date made available to the public: August 11, 2006.

Comment due date: August 29, 2006.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 431X)

BNSF RAILWAY COMPANY—ABANDONMENT AND DISCONTINUANCE
EXEMPTION—IN KNOX AND FULTON COUNTIES, IL

Decided: September 1, 2006

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Services to: (1) abandon a 1-mile line of railroad between milepost 51.58 and milepost 52.58 near Farmington, in Fulton County, IL; and (2) discontinue service over a 4.69-mile line of railroad between milepost 46.89 near Yates City, and milepost 51.58 near Farmington, in Knox County, IL, a total distance of 5.69 miles. Notice of the exemption was served and published in the Federal Register on August 4, 2006 (71 FR 44350-51). The exemption is scheduled to become effective on September 5, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 11, 2006. In the EA, SEA states that the U.S. Environmental Protection Agency, Region 5 (USEPA) has provided a number of comments regarding the proposed abandonment, and has no significant concerns, provided certain environmental matters pertaining to salvage activities are addressed. To address these environmental matters, SEA recommends that BNSF be required to conduct salvage activities in the following manner: recycle or appropriately dispose of rails, crossties, debris, and any other structures or materials and avoid leaving such materials in streams, wetlands, or on the banks of such waterways; appropriately dispose of any crossties treated with creosote; take appropriate measures to prevent or control spills from fuels, lubricants, or any other pollutants from entering any watercourses; and take measures to minimize noise and air pollution during salvage activities. In order to protect the West Fork Kickapoo Creek, BNSF should avoid staging or piling of materials in runoff areas and avoid incidental spills, dumping, discarding debris, and damage to area flora.

In the EA, SEA indicated that it conducted a search of the Native American Consultation Database (Database)¹ to identify federally recognized tribes that may have ancestral connections to the project area. The Database indicated that the following tribes may have an interest in the proposed abandonment: Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Peoria Tribe of Indians of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Citizen Potawatomi Nation, Oklahoma; and Prairie Band

¹ See Database at <http://www.nps.gov/nacd/>.

of Potawatomi Nation, Kansas. SEA stated that it would send a copy of the EA to these tribes for their review and comment.

Comments to the EA were due by August 29, 2006. On August 25, 2006, the National Geodetic Survey (NGS) submitted comments stating that seven geodetic station markers have been identified that may be affected by the proposed abandonment. Therefore, SEA additionally recommends that BNSF be required to provide NGS with at least 90 days' notice prior to beginning salvage activities so that NGS may plan for the possible relocation of the markers. Accordingly, the environmental condition recommended by SEA in the EA and the new condition recommended by SEA will be imposed.

Based on SEA's recommendations, the proposed abandonment, if implemented as conditioned, 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. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the condition that BNSF shall: (1) conduct salvage activities in the following manner: recycle or appropriately dispose of rails, crossties, debris, and any other structures or materials and avoid leaving such materials in streams, wetlands, or on the banks of such waterways; appropriately dispose of any crossties treated with creosote; take appropriate measures to prevent or control spills from fuels, lubricants, or any other pollutants from entering any watercourses; take measures to minimize noise and air pollution during salvage activities; and in order to protect the West Fork Kickapoo Creek, avoid staging or piling of materials in runoff areas and avoid incidental spills, dumping, discarding debris, and damage to area flora; and (2) provide NGS with at least 90 days' notice prior to beginning salvage activities so that NGS may plan for the possible relocation of the seven geodetic station markers.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

37665
DO

SERVICE DATE – JANUARY 17, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 431X)

BNSF RAILWAY COMPANY—ABANDONMENT AND DISCONTINUANCE
EXEMPTION—IN KNOX AND FULTON COUNTIES, IL

Decided: January 16, 2007

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Services to: (1) abandon a 1-mile line of railroad between milepost 51.58 and milepost 52.58 near Farmington, in Fulton County, IL; and (2) discontinue service over a 4.69-mile line of railroad between milepost 46.89 near Yates City, and milepost 51.58 near Farmington, in Knox County, IL, a total distance of 5.69 miles. Notice of the exemption was served and published in the Federal Register on August 4, 2006 (71 FR 44350-51). The exemption was scheduled to become effective on September 5, 2006.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 11, 2006. By decision served on September 1, 2006, the proceeding was reopened at the request of SEA and the exemption was made subject to two environmental conditions. The environmental conditions remain in effect.

On September 18, 2006, the Farmington Rail to Trails Coalition (Farmington), filed a request pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29 for issuance of a notice of interim trail use (NITU) for the right-of-way, and for a public use condition under 49 U.S.C. 10905, in order to negotiate with BNSF for acquisition of the right-of-way for use as a recreational trail. On September 11, 2006, BNSF filed a letter in opposition to Farmington's request, stating that BNSF needs the properties to support its ongoing rail operations.

On September 20, 2006, Keokuk Junction Railway Co. d/b/a Peoria & Western Railway (KJRY) filed a letter requesting that Farmington's trail use request be denied. In the alternative, KJRY requests that it be permitted to late-file an Offer of Financial Assistance (OFA) to acquire that portion of the line between milepost 52.20 and milepost 52.58. KJRY states that the portion of the line between milepost 52.20 and milepost 52.58 has already been leased to KJRY (although the exemption through which KJRY is seeking Board authorization for the lease transaction has been stayed by the Board). See Keokuk Junction Railway Co., d/b/a Peoria & Western Railway—Lease and Operation Exemption—BNSF Railway Company, STB Finance Docket No. 34918 (STB served Sept. 1, 2006) (Keokuk Lease).

On November 27, 2006, KJRY filed a letter stating that it has no intention of filing an OFA, so long as no NITU is issued. KJRY stated that its sole interest was to preserve that portion of the line to be leased to KJRY. On December 1, 2006, BNSF filed a letter stating that it will not consummate abandonment of that portion of the line between milepost 52.20 and milepost 52.58, because it has agreed to lease that portion of the line to KJRY in Keokuk Lease.

Farmington's requests for issuance of a NITU and imposition of a public use condition will be denied. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986).

Farmington also requests that the Board impose a public use condition. Because BNSF has agreed to lease a portion of the line to be abandoned to KJRY in Keokuk Lease, BNSF has demonstrated that it no longer intends to consummate the abandonment as to that portion of the line. Thus, that portion of the rail line is not appropriate for use for other public purposes within the meaning of 49 U.S.C. 10905 and 49 CFR 1152.28(a). A public use condition will therefore not be imposed.

This action 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. Farmington's request for issuance of a NITU and for a public use condition are denied.
 3. This decision is effective on its service date.
- By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary