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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