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SERVICE DATE – APRIL 26, 2011

SURFACE TRANSPORTATION

DECISION

Docket No. AB 6 (Sub-No. 473X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN ROLETTE  
AND TOWNER COUNTIES, N.D.

Decided: April 25, 2011

BNSF Railway Company (BNSF) filed a notice of exemption under 49 C.F.R. § 1152 subpart F—Exempt Abandonments, to abandon 17.75 miles of rail line between milepost 30.00, north of Bisbee, and milepost 47.75 at Rolla, in Rolette and Towner Counties, N.D. The notice was served on January 12, 2011 and published in the Federal Register on January 13, 2011 (76 Fed. Reg. 2,445-46). The exemption became effective on February 11, 2011.

On March 21, 2011, the Rolla Job Development Authority (RJDA) filed a letter requesting that “a stay of BNSF’s request be granted thus allowing sufficient time for fruitful negotiations for the possible purchase of the line.” BNSF replied in opposition on March 22, 2011. RJDA’s request will be denied.

The request is untimely. At footnote 1 of the notice of exemption, the Board, in denying RJDA’s request to delay service and publication of the notice, informed RJDA of its various options for future relief and noted the relevant deadlines. Petitions for stay were due on or before January 24, 2011,<sup>1</sup> and the exemption became effective on February 11, 2011. RJDA’s stay request was not filed until March 21, 2011. Thus, RJDA’s will be denied as untimely.

Even if RJDA’s stay request had been timely, RJDA fails in its letter to mention, much less satisfy, any of the standards that a petitioner must meet in order for a stay to be granted. See, e.g., Washington Metro Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). For that reason, even if this stay request had been timely, it would have been denied.

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<sup>1</sup> Any formal expressions of intent to file an offer of financial assistance (OFA) under 49 C.F.R. § 1152.27(c)(2) to purchase the subject line were due by January 24, 2011, as well.

Notwithstanding the stay denial, RJDA may negotiate with BNSF outside of the Board's processes to acquire the line. BNSF, in its reply letter, states that it will entertain any reasonable offer by RJDA to do so, provided that such an offer is made before salvage operations begin.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. RJDA's request for a stay is denied.
2. This decision is effective on its service date.

By the Board, Daniel R. Elliott, Chairman.