

39372

SERVICE DATE – SEPTEMBER 26, 2008

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-6 (Sub-No. 464X)]

BNSF Railway Company—Abandonment Exemption—in King County, WA

BNSF Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 5.60-mile rail line¹ between milepost 5.00, at Kennydale, and milepost 10.60 at Wilburton, in King County, WA.² The line traverses United States Postal Service Zip Codes 98004, 98005, 98006, and 98056.

BNSF has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) all overhead traffic on the line has been rerouted over other lines; (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

¹ The rail line at issue in this proceeding is part of a larger BNSF segment in King County that is the subject of two pending proceedings before the Board. For information regarding these proceedings see: BNSF Railway Company—Abandonment Exemption—in King County, WA, STB Docket No. AB-6 (Sub-No. 465X) (STB served Aug. 29, 2008), and The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Railway Company, STB Finance Docket No. 35128 (STB served June 20, 2008). An abandonment proposal involving a connecting BNSF branch line is also pending in BNSF Railway Company—Abandonment Exemption—in King County, WA, STB Docket No. AB-6 (Sub-No. 463X) (STB served Sept. 26, 2008).

² By petition for exemption filed on September 8, 2008, BNSF is also seeking an exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904. The merits of the petition will be addressed in a separate decision.

pending with the Surface Transportation 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 at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 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 OFA has been received, this exemption will be effective on October 28, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,³ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),⁴ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 6, 2008. Petitions to reopen or requests for

³ 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.

⁴ Effective July 18, 2008, the filing fee for an OFA increased to \$1,500. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 update, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

public use conditions under 49 CFR 1152.28 must be filed by October 16, 2008, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Kristy D. Clark, BNSF Railway Company, 2500 Lou Menk Drive, AOB-3, Fort Worth, TX 76131.

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

BNSF has filed both an environmental report and a historic report that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 3, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [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 September 26, 2009, 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: September 22, 2008.

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

Anne K. Quinlan

Acting Secretary