

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 435X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–  
IN ROCK ISLAND AND WHITESIDE COUNTIES, IL

Decided: February 12, 2009

BNSF Railway Company (BNSF) and Iowa, Chicago & Eastern Railroad Corporation (ICE) (together, Applicants), jointly filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service for BNSF to abandon, and ICE to discontinue service over, approximately 5.09 miles of railroad between milepost 20.31 and milepost 25.40, near Albany, in Rock Island and Whiteside Counties, IL. Notice of the exemption was served on December 27, 2005, and published in the Federal Register on December 28, 2005 (70 FR 76912-13).<sup>1</sup> The notice provided that, if consummation of the abandonment had not been effected by BNSF’s filing of a notice of consummation by December 27, 2006, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

By decision and notice of interim trail use or abandonment (NITU) served on January 25, 2006, the proceeding was reopened and a 180-day period was authorized for the Village of Albany (Village) to negotiate an interim trail use/rail banking agreement with BNSF for the subject line, under the National Trails System Act, 16 U.S.C. 1247(d). The trail use negotiation period under the NITU expired on July 25, 2006.<sup>2</sup> By decision served on July 21, 2006, the Village’s request to extend the interim trail use negotiating period and the public use condition was denied. By decisions served on December 14, 2006, December 18, 2007, and December 29, 2008, the time for BNSF to file a notice of consummation was extended to June 30, 2009.<sup>3</sup>

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<sup>1</sup> The notice served on December 27, 2005, and published on December 28, 2005, also embraced STB Docket No. AB-987X, Iowa, Chicago & Eastern Railroad Corporation–Discontinuance of Service Exemption–in Rock Island and Whiteside Counties, IL, in which ICE was granted an exemption to discontinue service over the line.

<sup>2</sup> The January 25, 2006 decision imposed a public use condition, which also expired on July 25, 2006.

<sup>3</sup> The December 29 decision also noted that BNSF had advised the Board that on December 22, 2008, it was consummating the abandonment of a portion of the 5.09-mile line extending between milepost 20.31 and milepost 22.81 and needed the extension of time to file its notice of consummation for the remaining portion of the line, between milepost 22.81 and 25.40.

The January 25 decision also included seven environmental conditions related to salvage activities as follows: BNSF shall: (1) prior to commencement of any salvage activities, consult with the Rock Island County Planning Department regarding impacts to land use; (2) prior to commencement of any salvage activities, consult with the National Geodetic Survey (NGS) to determine if any geodetic station markers may be affected by the proposed abandonment, and in the event any station markers are identified, notify NGS at least 90 days prior to the onset of salvage activities in order to plan for possible relocation by NGS, and report the results to the Board's Section of Environmental Analysis (SEA) in writing; (3) prior to commencement of any salvage activities, consult with the U.S. Fish and Wildlife Service Rock Island Field Office regarding potential impacts from salvaging activities to Federally listed threatened or endangered species that may occur in the vicinity of the line, and report the results of these consultations in writing to SEA; (4) prior to the commencement of any salvage activities, consult with the U.S. Bureau of Land Management, Eastern States Office, to determine if the proposed abandonment is subject to any original railroad grants with limited fee rights-of-way pursuant to the Railroad Right-of-Way Forfeiture and Abandonment Act, 43 U.S.C. 912; (5) prior to commencement of any salvage activities, consult with the National Park Service to determine if there will be any impacts to wildlife sanctuaries, refuges, national parks, or forests; (6) prior to commencement of any salvage activities, consult with the U.S. Environmental Protection Agency to ensure any concerns regarding potential contamination of the right-of-way and the need for a section 402 Clean Water Act stormwater permit are addressed, and report the results of these consultations to SEA in writing; and (7) in the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, immediately cease all work and notify SEA, interested Federally recognized tribes, and the Illinois Historic Preservation Agency (SHPO), and SEA will then consult with the SHPO, interested Federally recognized tribes, and BNSF to determine whether any mitigation measures are necessary.

In a Post Post Environmental Assessment dated January 5, 2009, SEA states that subsequent communications and consultations show that BNSF has complied with conditions 1 through 6.<sup>4</sup> Accordingly, the proceeding will reopened and the previously imposed conditions 1 through 6 will be removed.

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

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(continued. . .)

BNSF stated that it was in negotiations with the Village for a possible sale of the remainder of the line. By letter filed on February 2, 2009, BNSF advised the Board that it has consummated the abandonment for the remainder of the line.

<sup>4</sup> Condition 7 imposed in the January 25 decision remains in effect for the duration of the salvage process. None of these salvage-related conditions is a barrier to consummation of abandonment of the line.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, conditions 1 through 6 imposed in the January 25, 2006 decision in this proceeding are removed.
3. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary