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SERVICE DATE - JUNE 27, 2001

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-492 (Sub-No. 2X)]

Fillmore Western Railway Company--Abandonment Exemption--in Fillmore County, NE

Fillmore Western Railway Company (FWRY) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances to abandon a line of railroad between: (a) milepost 1.7 near Fairmont and milepost 10.0 near Geneva, NE; and (b) milepost 8.1 near Fairmont, NE, and milepost 23.0, near Milligan, NE, a distance of approximately 23.2 miles in Fillmore County, NE.¹ The line traverses United States Postal Service Zip Codes 68354, 68401, 68361, and 68406.

FWRY has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line in the past 2 years; (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 Surface Transportation Board (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

¹ Pursuant to 49 CFR 1150.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. While the applicant initially indicated a proposed consummation date of June 10, 2001, because the verified notice was filed on June 7, 2001, consummation may not take place prior to July 27, 2001. Applicant's representative has subsequently confirmed that the correct consummation date is on or after July 27, 2001.

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 and discontinuance 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 July 27, 2001, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 9, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 17, 2001, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

² 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.

³ Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

A copy of any petition filed with the Board should be sent to applicant's representative: T. Scott Bannister, 1300 Des Moines Building, 405 - Sixth Avenue, Des Moines, IA 50309.

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

FWRY has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 2, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. 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), FWRY shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by FWRY's filing of a notice of consummation by June 27, 2002, 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: June 15, 2001.

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

Vernon A. Williams

Secretary