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SERVICE DATE – JULY 26, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 379X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY—
ABANDONMENT EXEMPTION—IN GARFIELD AND LOGAN COUNTIES, OKLA.

Decided: July 25, 2012

On April 16, 1998, The Burlington Northern and Santa Fe Railway Company (BNSF)¹ filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 42.80 miles of its line of railroad between milepost 73.60 near Fairmont and milepost 116.40 near Guthrie, in Garfield and Logan Counties, Okla. (the Line). Notice of the exemption was served and published in the Federal Register on May 6, 1998 (63 Fed. Reg. 25,132-33).

As pertinent here, on October 27, 1998, the Board, at the request of BNSF and the Oklahoma Department of Transportation (ODOT), issued a Decision and Notice of Interim Trail Use or Abandonment (NITU) permitting BNSF and ODOT to negotiate for trail use on the right-of-way. Shortly thereafter, BNSF and ODOT entered into an interim trail use/rail banking agreement.

On August 31, 2009, ODOT and Montoff Transportation Company, LLC (Montoff), filed a motion pursuant to 49 C.F.R. § 1152.29(f) requesting that the Board vacate the existing NITU and issue a replacement NITU, allowing Montoff to substitute for ODOT as interim trail user for the Line. By decision served March 22, 2010, the Board vacated the existing NITU and issued a replacement NITU substituting Montoff for ODOT.²

On February 17, 2010, Montoff filed a notice of exemption under 49 C.F.R. § 1150.31 to acquire from BNSF its right to reactivate rail service on the Line. See Montoff Transp. Co., LLC—Acquisition Exemption—BNSF Ry., FD 35354 (STB served Mar. 5, 2010).

By pleading filed on July 2, 2012, Montoff notified the Board of its intent to terminate trail use on the Line and requested that the Board vacate the existing NITU.

¹ Now BNSF Railway Company.

² Because Montoff stated that it intended to restore rail service on the Line in the future, the Board informed Montoff in the March 22 decision that the outstanding NITU must be vacated before operations over the Line may commence.

Montoff stated that it has notified Tie Yard of Omaha, the current owner of the right-of-way, and BNSF, the original abandonment exemption applicant, of the filing and that neither objects. By letter filed on July 18, 2012, Montoff notified the Board that it was not reactivating the Line nor seeking to exercise its rights to reactivate rail service. Montoff's request to vacate the NITU complies with 49 C.F.R. § 1152.29(d)(2) and, accordingly, it will be granted.

Because the existing NITU is being vacated and Montoff has indicated that it will not reactivate rail service, BNSF's abandonment exemption authority will be reinstated. BNSF may now fully abandon the Line if it chooses to do so, but it must file a notice of consummation as set forth under the Board's rules at 49 C.F.R. § 1152.29(e)(2) within 60 days of the service date of this decision. If BNSF does not timely file a notice of consummation, and there are no legal or regulatory barriers to consummation, the railroad's abandonment authority will automatically expire.

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. The NITU issued on March 22, 2010, is vacated.
3. The abandonment exemption granted on May 6, 1998, is hereby reinstated.
4. This decision will be served on BNSF's representative, Karl Morell, Suite 225, 655 15th St., N.W., Washington, DC 20005, and Tie Yard of Omaha, 8202 F St., Omaha, NE 68127.
5. This decision is effective on its service date.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.