

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 486X)

BNSF RAILWAY COMPANY—ABANDONMENT  
EXEMPTION—IN FULTON COUNTY, ILL.

Decided: May 15, 2013

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 14.5 miles of rail line between milepost 52.2 in Farmington and milepost 66.7 in Dunfermline, in Fulton County, Ill. Notice of the exemption was served and published in the Federal Register on January 24, 2013 (78 Fed. Reg. 5,244).

Under the Board's rules, the exemption was scheduled to become effective on February 23, 2013, unless it was stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed. On February 4, 2013, Hitchcock Scrap Yard, Inc. (HSY) timely filed a formal expression of intent to file an OFA to purchase all or a portion of the line, which had the effect of automatically staying the effective date of the exemption until March 5, 2013.<sup>1</sup> In its filing, HSY requested that BNSF provide HSY with certain information and documentation set forth in 49 C.F.R. § 1152.27(a). HSY also requested that the 30-day time period for filing an OFA be tolled for an additional 30 days in order to allow it an adequate opportunity to review and analyze the information requested from BNSF, and to submit its OFA.

By decision served March 4, 2013, HSY's extension request was granted, the deadline for HSY to file its OFA was extended to March 25, 2013, and the effective date of the exemption was extended to April 4, 2013.<sup>2</sup>

On March 5, 2013, BNSF requested an additional 30 days to develop the information requested by HSY and asked that the Board direct HSY to identify the specific portion of the line

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<sup>1</sup> See 49 C.F.R. § 1152.27(c)(2)(i).

<sup>2</sup> The March 4 decision also imposed an historic preservation condition and provided that the requests by Canton Park District of Canton, Ill., for issuance of a notice of interim trail use under the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, and for a public use condition under 49 U.S.C. § 10905, would be held in abeyance pending completion of the OFA process.

it wished to purchase. By decision served on March 22, 2013, the Board granted BNSF's request and directed HSY to notify BNSF by April 1, 2013, of the specific line segment it sought to purchase. By letter filed on April 1, 2013, HSY informed the Board that it had advised BSNF of its intent to file an OFA for the segment of the line between milepost 63.17 (in Canton, Ill.) and milepost 66.70 (in or near Dunfermline, Ill.) (the OFA segment).

On April 19, 2013, BNSF filed a copy of a letter to HSY detailing the net liquidation value (NLV) of the OFA segment and including a summary of the real estate appraisal performed by Colliers International. BNSF indicated that it would forward to HSY the full appraisal report once BNSF received such information.

On May 7, 2013, HSY filed a letter requesting that the Board further toll the period for it to submit an OFA to May 17, 2013.<sup>3</sup> According to HSY, BNSF submitted additional information to it on April 26, 2013, but this new information raised some additional questions. HSY states that it still intends to make an Offer of Financial Assistance. However, HSY asserts that the segment designated by HSY "appears to be partially compromised by a stretch of track that has been severed by a paved-over street crossing and buried by what appears to be adjoining landowner encroachments." HSY states that BNSF has been unable to provide any information regarding this situation. HSY requests the further extension of time to permit HSY to investigate the situation, review the information provided by BNSF, and prepare its OFA. On May 14, 2013, BNSF replied to HSY's request, stating that it does not object to an extension so long as no additional extensions are granted.<sup>4</sup>

Because more time is needed for HSY to review information recently provided by BNSF and because BNSF consents to, and thus will not be prejudiced by, the requested extension, an extension of the OFA filing deadline is warranted and will be granted. The OFA filing deadline will be extended to May 17, 2013, and the effective date of the abandonment exemption will be postponed until May 27, 2013. If the OFA process terminates without the sale of the line, a decision and notice addressing the requested interim trail use condition and public use condition will be issued.

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

It is ordered:

1. HSY's extension request is granted.
2. The time period for filing an OFA is extended to May 17, 2013.

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<sup>3</sup> HSY initially submitted its request on May 3 but did not indicate then that it had been served on BNSF. HSY renewed its request on May 7, stating that it had been served on all parties.

<sup>4</sup> BNSF also indicates that it is willing to consider selling the line outside of the OFA process, provided that HSY is willing to pay the NLV.

3. The effective date of the exemption is postponed until May 27, 2013.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.