

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 430X)¹

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN OKLAHOMA
COUNTY, OK

Decided: January 25, 2008

BNSF Railway Company (BNSF) and Stillwater Central Railroad, Inc. (SLWC) jointly filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service, for BNSF to abandon, and for SLWC to discontinue service over, approximately 2.95 miles of railroad between milepost 539.96 and milepost 542.91 in Oklahoma City, Oklahoma County, OK. Notice of the exemption was served and published in the Federal Register on October 13, 2005 (70 FR 59802). The exemption notice stated that, if consummation had not been effected by BNSF's filing of a notice of consummation by October 13, 2006, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

By decision served October 6, 2006, the Board granted BNSF's request for an extension of time to consummate the abandonment and for filing a notice of consummation until December 31, 2007. The Board denied a subsequent request to reject BNSF's notice of exemption in a decision served January 26, 2007.

Under 49 CFR 1152.29 (e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings. On December 26, 2007, BNSF filed a request to extend, until June 30, 2008, the time to consummate the abandonment. BNSF states that the extension is necessary due to weather delays and scheduling difficulties with various construction projects that must be completed before this abandonment can be consummated. Edwin Kessler (Mr. Kessler) filed a reply in opposition to BNSF's request for an extension on January 14, 2008, arguing that BNSF's authority to abandon the line has automatically expired and that BNSF has not justified a further extension. On January 18, 2008, BNSF filed a reply. BNSF has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation in this proceeding. Moreover, contrary to Mr. Kessler's position, because BNSF's request for extension was timely filed, the Board's jurisdiction over this matter was preserved and BNSF's authority did not expire. The Board also has continuing jurisdiction over this matter because a petition filed by

¹ The notice served and published on October 13, 2005, embraced STB Docket No. AB-1040X, Stillwater Central Railroad, Inc.—Discontinuance of Service Exemption—in Oklahoma County, OK.

Mr. Kessler on February 21, 2007, to reopen and reconsider the Board's January 26, 2007 decision in this proceeding remains pending. For these reasons, the relief sought will be granted.

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

It is ordered:

1. BNSF's request for an extension of time to consummate the abandonment is granted.
2. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before June 30, 2008.
3. This decision is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary