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SERVICE DATE – OCTOBER 29, 2007

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Docket No. AB-6 (Sub-No. 460X)

### BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN WEBSTER COUNTY, NE

Decided: October 25, 2007

By petition filed on July 11, 2007, BNSF Railway Company (BNSF) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an 8.41-mile line of railroad, extending from milepost 193.60, to milepost 202.01, near Red Cloud, in Webster County, NE (the line). Notice of the filing was served and published in the Federal Register on July 31, 2007 (72 FR 41817). The Board will grant the exemption, subject to standard employee protective conditions.

### BACKGROUND

According to BNSF, prior to 1983, the line was part of a through route between Kansas City, MO, and Denver, CO. In 1983, a bridge west of Red Cloud was damaged, rendering the overhead route unserviceable, and all overhead traffic was rerouted to other lines. Since 1983, only local traffic could move over the 5.25-mile portion of the line between milepost 196.76 and milepost 202.01 (western line segment), but there have been no customers since that time. BNSF states that the western line segment is in poor condition, and the one bridge located on it is damaged. BNSF estimates the cost of rehabilitating the bridge to be approximately \$870,000.

BNSF currently serves one shipper, Red Cloud Grain, LLC (RCG), on the 3.16-mile portion of the line between milepost 193.60 and milepost 196.76 (eastern line segment). RCG leases and operates a shuttle service and is the only customer that has used the eastern line segment within the last 2 years. The eastern line segment has been recently rehabilitated to allow for the expansion of RCG's elevator operation to a shuttle facility. RCG's operations include supplying wheat to markets in the eastern half of the United States via transportation over BNSF lines. RCG has the capacity to load 110-car shuttles. Currently, BNSF operates one shuttle from the facility approximately every 2 weeks. BNSF states that, after abandonment, RCG intends to purchase the eastern line segment and the underlying real estate and use it as a private spur to continue service with BNSF.

### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when

we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of this transaction under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment application, an exemption will expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption will foster sound economic conditions and encourage efficient rail management by relieving BNSF from the expense of retaining and maintaining a line that generates very little traffic and by allowing BNSF to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy would not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. Due to the damage to a bridge on the line, the line has little or no potential for future traffic. Also, the sole shipper on the line intends to purchase the line for use as a private spur after abandonment and has not filed in opposition of the proposed abandonment. Nevertheless, to ensure that RCG is informed of our action, we will require BNSF to serve a copy of the decision on RCG within 5 days of the service date and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

BNSF has submitted a combined environmental and historic report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) in this proceeding on September 7, 2007, recommending that no conditions be imposed on any grant of abandonment authority. Comments to the EA were due by October 8, 2007, but none were received.

Accordingly, no environmental or historic preservation conditions will be imposed. The proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

Although SEA has indicated in the EA that the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by BNSF of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

2. BNSF is directed to serve a copy of this decision on Red Cloud Grain, LLC, within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An Offer of Financial Assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 8, 2007, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on November 28, 2007. Petitions to stay must be filed by November 13, 2007, and petitions to reopen must be filed by November 23, 2007.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by October 29, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary