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SERVICE DATE - MARCH 29, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 403X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY—ABANDONMENT EXEMPTION—IN SEDGWICK COUNTY, KS

Decided: March 26, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its line of railroad, between milepost 494.22 and milepost 505.20 in and near Wichita, KS, and from milepost 515.23 to milepost 509.30 between Wichita and Valley Center, in Sedgwick County, KS, a total distance of 16.91 miles. Notice of the exemption was served and published in the Federal Register on March 24, 2003 (68 FR 14272). The notice stated that, if consummation has not been effected by BNSF's filing of a notice of consummation by March 24, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. By decision served on April 22, 2003, a decision and notice of interim trail use or abandonment (NITU) was served that reopened the proceeding and authorized a 180-day period for the City of Wichita (the City) to negotiate an interim trail use/rail banking agreement with BNSF for a 9.78-mile segment of the right-of-way extending from milepost 494.22 at the Butler County/Sedgwick County line, westward to milepost 504.00 near Hydraulic Street, in downtown Wichita.¹ At the request of BNSF, the negotiating period was extended by decision served on October 2, 2003. The negotiating period under the NITU is scheduled to expire on April 16, 2004.

By facsimile dated March 2, 2004, and received by the Board on March 25, 2004, the City requests that the NITU negotiating period be extended for an additional 180 days. By facsimile filed on March 24, 2004, BNSF indicates that it concurs with the City's request to extend the NITU negotiating period for an additional 180 days. BNSF states that the City and BNSF are still in negotiations and that the City plans to initiate a program to inform the public of the possible implementation of rail banking. BNSF also requests to extend the consummation notice filing deadline until December 31, 2004.²

¹ The April 22 decision also imposed several environmental conditions.

² 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.

Because an extension of the consummation notice filing deadline and the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d), and the rail carrier has indicated its willingness to continue negotiations, the requested extensions will be granted. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990). Accordingly, the NITU negotiating period will be extended to October 13, 2004, and the consummation notice filing deadline will be extended to December 31, 2004 .

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

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. BNSF's request for an extension of time to exercise abandonment authority is granted.
3. The negotiating period under the NITU is extended until October 13, 2004.
4. The authority to abandon must be exercised on or before December 31, 2004.
5. This decision is effective on its service date.

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

Vernon A. Williams
Secretary