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SERVICE DATE – APRIL 30, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 461X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN MARION COUNTY, MO

Decided: April 28, 2008

By petition filed on January 11, 2008, 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 a 0.56-mile line of railroad extending between milepost 13.86 and milepost 14.42, near Palmyra, in Marion County, MO. Notice of the filing was served and published in the Federal Register on January 31, 2008 (73 FR 5907). We will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

Petitioner states that the 0.56-mile line of railroad is the remnant of the Hannibal-Palmyra branch line that, for many years, served multiple industries, including manufacturers and warehouses. In 1957, a segment of the rail line extending from Oakland to Palmyra was abandoned. On the remaining 0.56-mile portion, there were only three shippers being served: an oil company, an agricultural coop and a lumber company. Prior to 2004, the oil company vacated its premises. The agricultural coop remains under lease on the line but has not made or received any shipments for a number of years. And in March 2006, Great Central Lumber (Great Central), the only shipper that has used the line in the past several years, began receiving its shipments at an area depot located west of the line proposed for abandonment. Petitioner states that, in the past 2 years, there have been only a total of 30 shipments made to Great Central over the line, consisting primarily of plywood and lumber, and in the year 2007, that shipper's traffic over the line averaged less than one carload per month. Petitioner indicates that it has no plans for and does not anticipate any potential for future use of the 0.56-mile rail line.

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 under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will foster sound economic conditions and encourage efficient rail management by relieving BNSF of the costs of maintaining and operating a line that is no longer used 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. Great Central, the only active shipper on the line, also receives shipments at an area depot located west of the proposed abandonment. Moreover, no one has filed in opposition to the proposed abandonment. Nevertheless, to ensure that the shippers on the line are informed of our action, we will require BNSF to serve a copy of the decision on them 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 set forth 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) on March 11, 2008, requesting comments by April 11, 2008. In the EA, SEA recommended that we not impose conditions on any decision granting abandonment authority.

No comments to the EA were filed by the April 11, 2008 due date. Therefore, we will not impose any conditions. Accordingly, based on SEA's recommendation, we conclude that 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 the shippers on the line 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 May 9, 2008, 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 May 30, 2008. Petitions to stay must be filed by May 15, 2008, and petitions to reopen must be filed by May 27, 2008.

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 April 30, 2009, 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 Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary