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SERVICE DATE - NOVEMBER 20, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-492 (Sub-No. 2X)

FILLMORE WESTERN RAILWAY COMPANY--  
ABANDONMENT EXEMPTION--IN FILLMORE COUNTY, NE

Decided: November 15, 2001

Fillmore Western Railway Company (FWRY) filed a notice of exemption under 49 CFR 1152.50 Subpart F—Exempt Abandonments and Discontinuances of Trackage Rights to abandon a line of railroad between: (a) milepost 1.7 near Fairmont and milepost 10.0 near Geneva, NE; and (b) milepost 8.1 near Fairmont, NE, and milepost 23.0 near Milligan, NE, a distance of approximately 23.2 miles in Fillmore County, NE.<sup>1</sup> Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on July 27, 2001, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Provident Industries, LLC (PI) to purchase the portion of the right-of-way between milepost 8.1 near Fairmont and milepost 23.0 near Milligan.<sup>2</sup> In a decision served on August 31, 2001, PI was found financially responsible and the effective date of the exemption authorizing abandonment was postponed for that portion of the line to permit the OFA process to proceed.<sup>3</sup> By decision served on September 18, 2001, the due date for requests to establish the terms and conditions for the sale price of the line was extended to October 1, 2001, and the due date for replies to any request to set terms and conditions was extended to October 9, 2001. Subsequently, as no agreement was reached, PI filed a request that the Board establish the conditions and amount of compensation for the sale of the line, to which FWRY replied. Thereafter, in a decision served October 31, 2001, the Board set the purchase price for the line at \$615,400, and established terms for transfer of the line.

By facsimile received on November 13, 2001, PI states that it is not agreeable to the

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<sup>1</sup> Notice of the exemption was served and published in the Federal Register on June 27, 2001 (66 FR 34328-29).

<sup>2</sup> The filing of PI's formal expression of intent to file an OFA stayed the effective date of the exemption until August 6, 2001. By decision served July 20, 2001, the time period for PI to file its OFA was extended until August 27, 2001, or 20 days after PI's receipt of the requested information, whichever was later, and the effective date of the exemption as to the pertinent portion of the right-of-way was further postponed until September 5, 2001, or 30 days after PI's receipt of the required information, whichever was later.

<sup>3</sup> The August 31, 2001 decision also identified September 26, 2001, as the date on or before which the buyer or seller could request the Board to establish the terms and conditions of the purchase for that portion of the line.

terms and conditions established in the October 31, 2001 decision, and that it and FWRY have reached a tentative agreement for PI to acquire the property outside the OFA process.

When an entity offering to purchase a line later notifies the Board that it is not willing to accept the terms and conditions set out, the Board will serve a decision vacating the prior decision which postponed the effective date of the decision granting the abandonment exemption. See 49 U.S.C. 10904 and 49 CFR 1152.27(g)(2). Accordingly, the OFA process will be terminated, and the decision served August 31, 2001, will be vacated to permit the prior abandonment authorization for the portion subject to the OFA to become effective on the service date of this decision.

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

It is ordered:

1. The OFA process in this proceeding is terminated.
2. The decision served August 31, 2001, is vacated to the extent it postponed the effective date of the abandonment exemption to permit the OFA process to proceed on the portion located between milepost 8.1 and milepost 23.01.<sup>4</sup> The abandonment exemption for this portion will be effective on the service date of this decision.
3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary

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<sup>4</sup> The abandonment exemption for the remainder of the line between milepost 1.7 near Fairmont and milepost 10.0 near Geneva, NE, became effective on July 27, 2001.