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SERVICE DATE – NOVEMBER 30, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1069X

KERN VALLEY RAILROAD COMPANY
—TERMINATION OF TRackage RIGHTS—
IN LAS ANIMAS COUNTY, COLO.

Decided: November 29, 2010

On September 10, 2010, Kern Valley Railroad Company (KVR), a Class III carrier, filed a petition (petition) under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 to terminate the grant of trackage rights held by BNSF Railway Company (BNSF) to operate over KVR's 2-mile Jansen Yard Segment between milepost 0.0 and milepost 2.0 in Jansen, Las Animas County, Colo. Notice of the filing was served and published in the Federal Register (75 Fed. Reg. 60,496) on September 30, 2010. In a pleading filed on September 29, 2010, BNSF opposes KVR's petition. By letter filed on October 1, 2010, KVR states that it is withdrawing its petition and requests that the Board return the check that it submitted as payment of the filing fee.¹

The Board will permit KVR to withdraw its petition and the proceeding will be dismissed without prejudice. KVR's request that the Board return its check, however, will be denied. Under 49 C.F.R. § 1002.2(c), filing fees are not refundable after a pleading has been accepted for filing, even if the pleading is subsequently withdrawn. Moreover, the Board has incurred significant costs in processing this proceeding to date.

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

It is ordered:

1. KVR's petition is dismissed and this proceeding is discontinued without prejudice.
2. KVR's request for a refund of its filing fee is denied.

¹ KVR states that it is withdrawing its petition because the Board elected to change the petition into an adverse application for the discontinuance of trackage rights. The Board changed the docket number associated with the petition from a Finance Docket (FD) to a discontinuance or abandonment docket (AB) to properly reflect the nature of the subject matter in this proceeding. The Board did not change the petition into an application.

3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.