

SERVICE DATE – MAY 24, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 6 (Sub-No. 486X)

BNSF RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN FULTON COUNTY, ILL.

Decided: May 24, 2013

In this decision, the Board is reopening the proceeding to terminate the Offer of Financial Assistance (OFA) process, issue a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, and impose a public use condition under 49 U.S.C. § 10905.

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 14.5 miles of rail line between milepost 52.2 in Farmington and milepost 66.7 in Dunfermline, in Fulton County, Ill. Notice of the exemption was served and published in the Federal Register on January 24, 2013 (78 Fed. Reg. 5,244). The exemption was scheduled to become effective on February 23, 2013, unless it was stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed.

On February 4, 2013, Hitchcock Scrap Yard, Inc. (HSY) timely filed a formal expression of intent to file an OFA to purchase all or a portion of the line, which had the effect of automatically staying the effective date of the exemption until March 5, 2013.¹ In its filing, HSY requested that BNSF provide HSY with certain information and documentation set forth in 49 C.F.R. § 1152.27(a). HSY also requested that the 30-day time period for filing an OFA be tolled for an additional 30 days to allow HSY an adequate opportunity to review and analyze the information requested from BNSF and submit its OFA.

By decision served March 4, 2013, HSY's extension request was granted, the deadline for HSY to file its OFA was extended to March 25, 2013, and the effective date of the exemption was extended to April 4, 2013. The Board's March 4 decision also imposed an historic preservation condition recommended by the Board's Office of Environmental Analysis. Additionally, the decision addressed a request by the Canton Park District of Canton, Ill. (Canton Park) for the issuance of a NITU and for a public use condition to permit Canton Park to negotiate with BNSF for acquisition of the right-of-way for use as a trail. The Board found that Canton Park had satisfied the requirements for issuance of a NITU and the imposition of a public

¹ See 49 C.F.R. § 1152.27(c)(2)(i).

use condition, but stated that the issuance and effectiveness of the NITU and public use condition would be held in abeyance until completion of the OFA process, which took precedence.

On March 5, 2013, BNSF requested an additional 30 days to develop the information requested by HSY and asked that the Board direct HSY to identify the specific portion of the line it wished to purchase. By decision served on March 22, 2013, the Board granted BNSF's request and directed HSY to notify BNSF by April 1, 2013, of the specific line segment it sought to purchase.²

On April 19, 2013, BNSF filed a copy of a letter to HSY detailing the net liquidation value (NLV) of the OFA segment and including a summary of the real estate appraisal performed by Colliers International. BNSF indicated that it would forward to HSY the full appraisal report once BNSF received such information.

On May 7, 2013, HSY filed a letter requesting that the Board further toll the period for it to submit an OFA to May 17, 2013.³ According to HSY, BNSF submitted additional information to it on April 26, 2013, but this new information raised some additional questions. HSY, however, asserted that it still intended to submit an OFA. On May 14, 2013, BNSF replied to HSY's request and confirmed that it did not object to an extension so long as no additional extensions were granted.⁴ By decision served on May 15, 2013, HSY's extension request was granted and the OFA filing deadline was extended to May 17, 2013.

No OFA was filed by the May 17, 2013 deadline. Therefore, the OFA process has now terminated and the abandonment exemption will become effective as scheduled on May 27, 2013.

Because this decision terminates the OFA process and the Board has already determined that Canton Park has satisfied the requirements for a NITU and for public use, a NITU will now be issued and a public use condition will be imposed, and both will commence on the May 27, 2013 effective date of the exemption.

² By letter filed on April 1, 2013, HSY informed the Board that it had advised BSNF of its intent to file an OFA for the segment of the line between approximately milepost 63.17 (in Canton, Ill.) and the end of the abandonment at milepost 66.7 (in or near Dunfermline, Ill.) (the OFA segment).

³ HSY initially submitted its request on May 3 but did not indicate then that it had been served on BNSF. HSY renewed its request on May 7, stating that it had been served on all parties.

⁴ In its filing, BNSF also indicated that it was willing to consider selling the line outside of the OFA process, provided that HSY is willing to pay the NLV.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The OFA process is terminated.
3. The abandonment exemption will become effective on May 27, 2013, subject to the historic preservation condition previously imposed in this proceeding, and further subject to the conditions that: (1) BNSF is prohibited from disposing of the corridor, including the removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels, for a 180-day period from May 27, 2013, to November 23, 2013, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use; and (2) BNSF must comply with the interim trail use/rail banking procedures set forth below.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
8. If an agreement for interim trail use/rail banking is reached by November 23, 2013, interim trail use may be implemented. If no agreement is reached, BNSF may fully abandon the

line, subject to the conditions imposed in this proceeding. If an interim trail use/rail banking agreement is executed before November 23, 2013, the public use condition will expire to the extent the interim trail use/rail banking agreement covers the same line.

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