

SERVICE DATE - JULY 26, 2001

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: July 24, 2001

Fillmore Western Railway Company (FWRY) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinues 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. Notice of the exemption was served and published in the Federal Register on June 27, 2001 (66 FR 34328-29). 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 which had the effect of staying the effective date of the exemption as to that portion of the right-of-way for 10 days until August 6, 2001.¹ PI simultaneously requested that FWRY provide it with the financial data and information prescribed in 49 CFR 1152.27(a).

Under 49 CFR 1152.27(c)(2)(ii)(B), OFAs are due 30 days after publication of the notice of exemption in the Federal Register. On July 18, 2001, PI filed a petition to toll the period for submitting an OFA until August 27, 2001, or until 20 days after PI's receipt of the information required to be furnished by FWRY under 49 CFR 1152.27(a). 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 is 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 is later.²

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 2, 2001. In the EA, SEA states that the National

¹ See 49 CFR 1152.27(c)(2)(i).

² Because this extension grant is not date specific, FWRY was directed to notify the Board that it has furnished the requested information to PI so that the due dates of the OFAs and the effective date of the extension can be determined.

Geodetic Survey (NGS) has identified seven geodetic station markers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that may disturb or destroy these markers to plan for their relocation. Therefore, SEA recommends that a condition be imposed requiring FWRY to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers. The condition will be imposed.

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. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the condition that FWRY consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers.
3. The effective date of the exemption for the remainder of the line between milepost 1.7 near Fairmont and milepost 10.0 near Geneva remains July 27, 2001.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary