

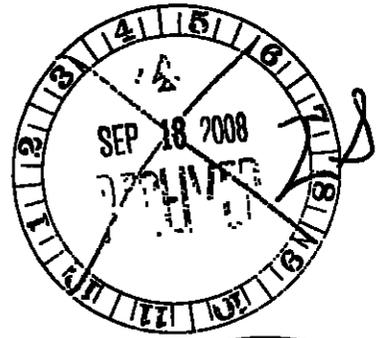


KAPLAN KIRSCH ROCKWELL

September 18, 2008

Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20423-0001

ENTERED
Office of Proceedings
SEP 19 2008
Part of
Public Record



Re *BNSF Railway Company – Abandonment Exemption – in King County, Washington (Woodinville Subdivision Milepost 11 25 to Milepost 23 80) Docket No AB-6 (Sub-No 465X)*

223639

Dear Ms Quinlan

I am enclosing an original and ten (10) copies of each of

- 1) Reply of King County, Washington, to BNSF Railway Company’s Petition for Exemption,
- 2) Request of King County, Washington, for Interim Trail Use Pursuant to 49 CFR §1152.29, and
- 3) Response of BNSF Railway Company, Port of Seattle and King County, Washington, to Request for Information in Docket No AB-6 (Sub-No 465X)

in the above referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger. Please note that a 3.5 inch diskette is enclosed with this document.

I am enclosing the \$200.00 filing fee required for the Interim Trail Use. However, King County is seeking a waiver of the filing fee based on the fact that it is a local government entity filing the Interim Trail Use on behalf of the general public. See 49 CFR §1002.2(c), STB Ex Parte No 542 (Sub-No 6) – *Regulations Governing Fees For Services Performed In Connection With Licensing and Related Services – Policy Statement* (Served December 6, 2000). King County is a “state or local government entity” and is a non-carrier, as explained in the Interim Trail Use.

Sincerely,

Charles A Spitulnik

Enclosures

cc All Parties of Record

193559

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223639

BEFORE THE
SURFACE TRANSPORTATION BOARD



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DOCKET NO. AB-6 (SUB-NO. 465X)

BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION
IN KING COUNTY, WASHINGTON

REPLY OF KING COUNTY, WASHINGTON
TO PETITION FOR EXEMPTION

King County, Washington (“King County”) hereby submits its Reply in support of the Petition of BNSF Railway Company (“BNSF”) for Exemption filed in this proceeding on August 11, 2008 (the “*BNSF Petition*”).¹ King County specifically confirms its support for the exemption from the requirements of 49 U.S.C. §§10904 and 10905 in the above-referenced proceeding. The relief requested in the BNSF Petition, including the exemption from the requirements of §§10904 and 10905, satisfies the requirements of 49 U.S.C. §10502 and will permit the County to implement a proposed trail pursuant to 16 U.S.C. §1247(d).

BACKGROUND

The abandonment authority that BNSF seeks in this proceeding is an integral part of a multi-faceted series of transactions involving BNSF, King County and the Port of Seattle (the “Port”). As those three parties describe in more detail in the Response of BNSF, Port of Seattle and King County to the Board’s request for information, filed jointly by them today in this proceeding (the “*Joint Response*”),² the Port will acquire from BNSF (1) a continuous 33 25

¹ According to a Notice in this proceeding served on August 29, 2008, 73 *Fed Reg* 51047 (Aug 29, 2008), response to the *BNSF Petition* are due on September 18, 2008.

² The *Joint Response* is also being filed in the following dockets: Finance Docket No. 35128 *The Port of Seattle – Acquisition Exemption – Certain Assets of BNSF Railway Company*, Docket No. AB-6 (Sub-No. 463X), *BNSF Railway Company – Abandonment Exemption in King County, Washington*, Docket No. AB-6 (Sub-No. 464X), *BNSF Railway Company – Abandonment Exemption in King County, Washington*.

mile-long corridor along the Woodinville Subdivision extending from milepost 5.00 in Kenndale to milepost 38.25 in Snohomish County and (2) the 7.30 mile-long Redmond Spur, which intersects the Woodinville Subdivision at milepost 23.80. With respect to the northernmost segment, between milepost 23.80 and milepost 38.25, BNSF will retain an exclusive freight easement.³ BNSF has sought authority to abandon and will enter into a trail use agreement with King County for the remaining segments.⁴ The Port will grant King County an easement to permit King County to fulfill its trail use responsibilities. King County will also acquire BNSF's reactivation right with respect to the Railbanking Segments. BNSF, the Port and King County expect to consummate the BNSF Transactions as soon as feasible after September 30, 2008, once all of the required approvals from this Board have been obtained.

The relief sought in the instant proceeding is an integral aspect of these transactions, and King County respectfully requests that the Board grant BNSF's Petition. While King County supports all of the relief BNSF seeks, this Response will focus only on the requested exemption from §§10904 and 10905.

ARGUMENT

Exemption from the requirements of 49 U.S.C. §§10904 and 10905 will permit King County to implement the proposed trail. Prior Board decisions have confirmed that this a legitimate public purpose that provides sufficient justification for approving such an exemption.

There is no reason to preserve this line for continued rail service. As BNSF has explained in the *BNSF Petition* " by the fall of 2008, all local traffic will be moved off the

³ BNSF will transfer that freight easement to a third party operator. At the appropriate time, that operator will comply fully with all regulatory requirements.

⁴ The segment of the Woodinville Subdivision from Milepost 10.6 to Milepost 11.25 (the "Wilburton Segment") has been fully abandoned and is therefore no longer under the Board's jurisdiction. STB Docket No. AB-6 (Sub-No. 453X) *BNSF Railway Company – Abandonment Exemption – In King County, WA* Notice of Consummation (Filed March 10, 2008). BNSF will transfer the Wilburton Segment to the Port along with the segment that is the subject of this proceeding.

Line and all former overhead traffic has already been rerouted. Consequently, by the end of this year there will no longer be any demand for rail freight service along the Line.” *BNSF Petition* at 12

Moreover, as BNSF has explained in the *BNSF Petition*, an explanation that is confirmed in the *Joint Response* filed today, the three parties have worked out an arrangement by which this line will become part of a trail to be planned and implemented by King County. In these circumstances, ample Board precedent supports granting the relief BNSF seeks. In Docket No. AB-33 (Sub-No 141X), *Union Pacific R Co – Abandonment Exemption – In Pima Co , AZ (slip op , Service Date Feb 16, 2000)*, the Board stated the following:

Exemptions from 49 U.S.C. 10904-10905 have been granted from time to time, provided the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service. [Footnote, citing earlier cases supporting this conclusion, omitted] Here, UP has transferred the right-of-way to the City for a valid public purpose and the sole shipper on the line will be relocated and will have access to rail service from UP. Imposition of OFA procedures would delay the City’s land use plans and policies and development of the area. Likewise, there is no need for a public use condition because a public use for the right-of-way has already been established between UP and the City

Id at 3-4 *Accord*, Docket No AB-33 (Sub-No. 105X), *Union Pacific R Co – Abandonment Exemption – In Kane Co , IL (slip op , Service Date April 29, 1997)*, at 3 (“Exemptions from 49 U.S.C 10904 have been granted from time to time, but only when the right-of-way is needed for a valid public purpose and there is no overriding need for continued rail service.”) The Board noted further that in those circumstances, the requirements of 49 U.S.C §10502 are satisfied because “applying the OFA or public use requirements in this instance is not necessary to carry out the rail transportation policy” and “[a]llowing the abandonment exemption to become effective expeditiously, without first being subject to these requirements, would minimize the

need for Federal regulatory control over the rail transportation system, expedite the regulatory decision and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)] ” *Id*

The criteria and circumstances that have permitted this Board to grant an exemption from the requirements of 49 U S C §§10904 and 10905 are present here King County and the Port have agreed upon the implementation of a trail on this segment, and the Port will grant King County an easement that will provide it with the property rights and interests that are sufficient to implement that objective King County and BNSF have agreed upon the terms and conditions of a Trail Use Agreement. BNSF has confirmed that there is no legitimate reason to preserve the option for freight service on this corridor

Accordingly, and in view of the foregoing, and of the facts and argument stated in the *BNSF Petition* and in the *Joint Response*, King County respectfully requests that this Board approve the Petition for Exemption submitted in this proceeding, including the exemption from the requirements of 49 U S.C. §§10904 – 10905

Dated: September 18, 2008

Respectfully submitted,



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Attorneys for King County, Washington

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing REPLY OF KING COUNTY, WASHINGTON TO PETITION FOR EXEMPTION to be served by first class mail, postage prepaid upon the following:

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Dated this 18th day of September, 2008.



Charles A Spitulnik