

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 498X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN PAWNEE COUNTY,
OKLA.

Decided: June 11, 2020

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 0.74 miles of Line Segment 1047 (formerly 7401), track 5403 between milepost 6.47 and milepost 7.21 in Pawnee County, Okla. (the Line). Notice of the exemption was served and published in the Federal Register on April 25, 2019 (84 Fed. Reg. 17,445). The exemption became effective on May 25, 2019. The deadline for BNSF to file its notice of consummation of abandonment was April 25, 2020, one year after notice of the exemption was served.¹

Under 49 C.F.R. § 1152.29(e)(2), a railroad may, for good cause shown, request an extension of time to file a notice of consummation. On May 7, 2020, BNSF filed a letter requesting that the Board waive the applicable deadlines for filing a consummation notice and grant a one-year extension of the consummation deadline to April 25, 2021. BNSF explains that it is working to satisfy the Board's conditions but has not yet completed its required consultations and it is not prepared to consummate the abandonment at this time. (*Id.* at 2.) Furthermore, counsel for BNSF explains that he mistakenly believed that the Board's May 24, 2019 decision imposing conditions had reset the consummation deadline, but now realizes that it did not. (*Id.*) Counsel therefore requests that the Board waive the 49 C.F.R. § 1152.29(e)(2) requirement and grant BNSF's one-year extension request. (*Id.*)

BNSF has shown good cause to extend the time to consummate the abandonment and file its notice of consummation. Moreover, while BNSF's request was filed after the consummation deadline, BNSF has provided an adequate justification for its delay. The Board has previously granted a consummation extension request under similar circumstances. See, e.g., Norfolk S. Ry.—Aban. Exemption—in Marietta, Lancaster Cty., Pa., AB 290 (Sub-No. 328X) (STB served

¹ Under 49 C.F.R. § 1152.29(e)(2), if a notice of consummation of abandonment is not filed within (i) one year after the service date of the decision permitting abandonment (provided there are no legal or regulatory barriers to consummation), or (ii) 60 days of the satisfaction, expiration, or removal of the last legal or regulatory barrier to consummation, whichever is later, the abandonment authority automatically expires. Here, by decision served May 24, 2019, the Board imposed three salvage-related environmental conditions, which are not barriers to BNSF's consummation of the abandonment.

Apr. 3, 2013). Accordingly, BNSF's request will be granted, and 49 C.F.R. § 1152.29(e)(2) will be waived to the extent it would have resulted in the expiration of BNSF's abandonment authority on April 25, 2020.² The deadline for BNSF to file its notice of consummation will be extended to April 25, 2021.

It is ordered:

1. The provision at 49 C.F.R. § 1152.29(e)(2) is waived in this instance, to the extent discussed above.
2. BNSF's request for an extension of time to consummate the abandonment is granted; the authority to abandon must be exercised and the notice of consummation filed on or before April 25, 2021.
3. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

² See 49 C.F.R. § 1011.7(a)(2)(xiv) (delegating to the Director of the Office of Proceedings "authority initially" to "waive the regulations at 49 CFR part 1152, subpart C," which includes 49 C.F.R. § 1152.29(e)(2), on "appropriate petition"); see generally GTE Serv. Corp. v. FCC, 782 F.2d 263, 273-74 & n.12 (D.C. Cir. 1986) (affirming agencies' inherent power to control their own dockets).