

SERVICE DATE – APRIL 6, 2021

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Digest:¹ This decision waives a regulatory provision that would have resulted in the expiration of BNSF Railway Company's authority to abandon approximately 12.45 miles of rail line in Fulton County, Ill., and accepts the railroad's notice of consummation.

Decided: April 5, 2021

On January 4, 2013, BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. part 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. (the Line). Notice of the exemption was served and published in the Federal Register on January 24, 2013 (78 Fed. Reg. 5244). The exemption became effective on May 27, 2013.

By decision served on March 4, 2013, the Board imposed a historic preservation condition on the Line under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f (repealed and recodified 2014) (current version at 54 U.S.C. § 306108). On March 21, 2016, the Section 106 condition was modified to exclude the portion of the Line between milepost 64.65 and milepost 66.7, and BNSF's notice of consummation for that portion (which it had prematurely submitted on January 19, 2016) was accepted. Subsequently, through a series of decisions, the Section 106 condition was further modified and eventually removed, and the consummation deadline for the remainder of the Line was extended, ultimately to January 21, 2021.

On January 21, 2021, BNSF submitted its notice of consummation for the remainder of the Line between milepost 52.2 and milepost 64.65. However, BNSF failed to include the required certificate of service. The certificate of service was filed the next day, perfecting the filing but resulting in a late filing date of January 22, 2021.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

Under 49 C.F.R. § 1152.29(e)(2), if a railroad does not timely file its notice of consummation, the abandonment authority automatically expires. Here, BNSF attempted to file its notice on time but failed to do so through what appears to be an inadvertent error. BNSF corrected the error the next day, one day after the deadline. Under the circumstances, the Board will waive the provision at 49 C.F.R. § 1152.29(e)(2) to the extent it would have resulted in the expiration of BNSF's abandonment authority on January 21, 2021.

It is ordered:

1. The provision at 49 C.F.R. § 1152.29(e)(2) is waived in this instance, as discussed above.
2. BNSF's January 22, 2021 notice of consummation is accepted.
3. This decision is effective on the date of service.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz. Board Member Primus concurred with a separate expression.

BOARD MEMBER PRIMUS, concurring:

BNSF failed to timely file its notice of consummation, even after the Board granted a one-year extension of its abandonment authority. It was only after STB staff notified BNSF of its omission did BNSF correct its omission and file its certificate of service, after the deadline. BNSF did not provide an explanation for its error or request relief.

I agree with the decision to waive § 1152.29(e)(2) in order to save BNSF's abandonment authority from expiring as a result of its own error. However, I urge BNSF, and other parties coming before the Board, to use diligence and adhere to the Board's statutory and regulatory deadlines.