

SERVICE DATE – APRIL 17, 2019

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: April 16, 2019

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. 5,244). The exemption became effective on May 27, 2013.¹

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, 54 U.S.C. § 306108. The proceeding was reopened on March 21, 2016 (March 2016 Decision), and January 9, 2017, to modify the Section 106 historic preservation condition, such that that condition now only applies to the stone arch bridge at milepost 52.86.²

On February 4, 2019, BNSF submitted a request to extend the period for consummating the abandonment until January 21, 2020.³ The Board will grant this request. Under 49 C.F.R.

¹ BNSF Ry.—Aban. Exemption—in Fulton Cty., Ill., AB 6 (Sub-No. 486X) (STB served May 24, 2013). In that same decision, the Board issued a notice of interim trail use or abandonment (NITU) to authorize the Canton Park District of Canton, Ill. (Canton Park), to negotiate with BNSF for interim trail use and also imposed a public use condition under 49 U.S.C. § 10905. The public use condition expired on November 23, 2013. By a series of decisions, the NITU negotiation period was extended until November 22, 2018.

² The March 2016 Decision, among other things, modified the Section 106 condition to exclude, and therefore permit abandonment of, the segment of rail line between milepost 64.65 and milepost 66.7. The decision stated that, although BNSF had improperly filed its notice of consummation before the historic preservation condition was removed, the Board would consider the consummation effective on March 21, 2016.

³ Neither Canton Park nor BNSF has requested to extend the NITU negotiating period beyond its November 22, 2018 expiration.

§ 1152.29(e)(2), if a notice of consummation of abandonment is not filed within the later of (i) one year from the date of service of a decision permitting abandonment; or (ii) 60 days of the expiration or removal of the last legal or regulatory barrier to consummation (here, the NITU), the abandonment authority expires. Section 1152.29(e)(2) also provides that a railroad may request an extension of time to file a consummation notice so long as it does so sufficiently in advance of the expiration of the 60-day period to allow for timely processing. BNSF did not file an extension request or a notice of consummation by January 21, 2019 (60 days after the NITU expired). Accordingly, under the Board's rules, BNSF's authority to abandon would have automatically expired on that day.

However, because of the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019, the Board was not accepting filings during that time. Upon the resumption of operations, the Board issued an order stating that "any material due to be submitted to the Board during the partial Federal government shutdown period . . . will now be due no later than February 4, 2019, unless otherwise ordered by the Board." Filings Submitted or Due to Be Submitted During the Partial Federal Government Shutdown, EP 751 (STB served Jan. 28, 2019). BNSF's request to extend the consummation deadline was therefore timely filed under that order. However, because the consummation deadline would have automatically expired on January 21, 2019, and out of an abundance of caution, this decision will waive the 60-day 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, 2019,⁴ and will grant BNSF's extension request with respect to the portion of the Line between mileposts 52.2 and 64.65, excluding the stone arch bridge at milepost 52.86.

The 60-day provision will again apply with respect to any future expiration or removal of all legal or regulatory barriers to consummation. BNSF is reminded that any future request to extend the consummation period should explain why, for good cause, an extension is needed. See § 1152.29(e)(2).

It is ordered:

1. The provision at 49 C.F.R. § 1152.29(e)(2) setting a 60-day time limit for filing a notice of consummation upon the expiration of any legal or regulatory barriers is waived in this instance.

2. BNSF's request for an extension of time to consummate the abandonment of the line described above is granted.

⁴ 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).

3. The authority to abandon must be exercised and the notice of consummation filed on or before January 21, 2020.

4. This decision is effective on the date of service.

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