

40291

SERVICE DATE – OCTOBER 22, 2009

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-6 (Sub-No. 469X)]

BNSF Railway Company–Abandonment Exemption–in Pierce County, WA

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 1.56-mile line of railroad between milepost 0.59, and milepost 2.15, in Tacoma, Pierce County, WA. The line traverses United States Postal Service Zip Code 98402.

BNSF has certified that: (1) no local traffic has been handled to or from any customer over the rail line for at least 2 years; (2) all overhead traffic has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.–Abandonment–Goshen,

360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 21, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 2, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 12, 2009, with: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Kristy Clark, General Attorney, BNSF Railway Company, 2500 Lou Menk Drive, AOB-3, Fort Worth, TX 76131.

If the verified notice contains false or misleading information, the exemption is void ab initio.

BNSF has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each OFA must be accompanied by the filing fee, which currently is set at \$1,500. See 49 CFR 1002.2(f)(25).

environmental assessment (EA) by October 27, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by October 22, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: October 19, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary