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SERVICE DATE - JULY 2, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-870X]

Butler County, Kansas—Abandonment Exemption—in Butler County, KS

Butler County, Kansas (County) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its entire 10.6-mile line of railroad, between milepost 483.62, at Augusta, and milepost 494.22, near Andover, in Butler County, KS. The line traverses United States Postal Service Zip Codes 67010 and 67002.¹

The County has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years; (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 reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11

¹ The County acquired the line by donation from The Burlington Northern and Santa Fe Railway Company in Butler County, Kansas—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34139 (STB served Jan. 11, 2002).

(transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10502(g), unless the evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R. Corp.–Abandonment, 354 I.C.C. 744 (1978); and Northampton and Bath R. Co.–Abandonment, 354 I.C.C. 784 (1978). The County states that “no corporate affiliate of the County will continue substantially similar rail operations and there is no corporate parent that would benefit from the proposed abandonment.” (Citations omitted). Accordingly, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 4, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental

issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 12, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 22, 2004, with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to the County's representative: Karl Morell, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

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

The County has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 9, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

² 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.

³ Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

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), the County 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 the County's filing of a notice of consummation by July 2, 2005, 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: June 24, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary