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SERVICE DATE – DECEMBER 13, 2005

DO

FR-4915-01-P

Surface Transportation Board

[STB Docket No. AB-882 (Sub-No. 2X)]

Minnesota Commercial Railway Company—Discontinuance of Trackage Rights

Exemption—in Washington County, MN

The Minnesota Commercial Railway Company (MNNR) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Services to discontinue trackage rights over a 0.99-mile rail line of (railroad) between milepost 11.81 and milepost 12.80, in Stillwater, Washington County, MN.<sup>1</sup> This line traverses United States Postal Service Zip Code 55082.<sup>2</sup>

MNNR has certified that: (1) no local traffic has been handled to or from any customer for at least 2 years; (2) no overhead traffic has been handled on the line for at least 2 years and, the line is not capable of handling overhead traffic as it is stub ended;

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<sup>1</sup> MNNR's trackage rights were the subject of an exemption in Minnesota Commercial Railway, Inc.—Trackage Rights Exemption—Burlington Northern Railroad Company, Finance Docket No. 31603 ICC served Feb. 26, 1990).

<sup>2</sup> BNSF received abandonment authority for the 0.99-mile line segment in The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Washington County, MN, STB Docket No. AB-6 (Sub-No. 413X) (STB served May 28, 2004). The May 28 notice stated that, if consummation has not been effected by BNSF's filing of a notice of consummation by May 28, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. Also, on April 22, 2005, BNSF filed a request to extend the consummation deadline until December 31, 2005, and by decision served May 10, 2005, that deadline was extended until December 31, 2005. In any event, BNSF may not consummate abandonment until MNNR receives authority to discontinue its trackage rights over the line.

(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 Surface Transportation 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 1105.12 (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 discontinuance 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 January 12, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>3</sup> and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>4</sup> must be filed by December 23, 2005. Petitions to reopen must be filed by January 3,

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<sup>3</sup> 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.

<sup>4</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,200. See 49 CFR 1002.2(f)(25).

2006, with: 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 applicants' representative: Karl Morell, Ball Janik LLP, 1455 F St., N.W., Suite 225, Washington, DC 20005.

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

BNSF previously filed an environmental and historic report which addressed the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) based on the information in that report by December 16, 2005. 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.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, and historic preservation conditions will be imposed, where appropriate, in a subsequent decision.

Board decisions and notices are available on our website at

“WWW.STB.DOT.GOV.”

Decided: December 6, 2005.

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

Vernon A. Williams

Secretary