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OEA

SERVICE DATE – JUNE 29, 2012

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB 279 (Sub-No. 6X)

**Canadian National Railway Company – Abandonment Exemption –
in Niagara County, N.Y.**

BACKGROUND

In this proceeding, Canadian National Railway Company (CNR) filed a notice of exemption under 49 U.S.C. § 10502 seeking exemption from the requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Niagara County, New York. The rail line proposed for abandonment, the entire U.S. portion of CNR's Grimsby Subdivision, extends approximately 0.15 miles from milepost 0.20 to milepost 0.35 in the City of Niagara Falls (the Line). A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA).

ENVIRONMENTAL REVIEW

CNR submitted an Environmental Report that concludes the quality of the human environment would not be affected significantly as a result of the abandonment or any post-abandonment activities. CNR served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. § 1105.7(b)].¹ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Approximately 0.10 miles of the Line lies on the upper deck of the U.S. portion of Whirlpool Rapids Bridge (the Bridge), an international rail/highway bridge that crosses the Niagara River between Niagara Falls, New York, and Niagara Falls, Ontario. The Bridge is owned by the bi-national Niagara Falls Bridge Commission (NFBC). The Line also includes approximately 0.05 miles of single track on land in Niagara Falls, New York, that extends from the east end of the Bridge to the beginning of the Niagara Branch of CSX Transportation, Inc. (CSXT). NFBC owns the right-of-way between the eastern end of the Bridge and Whirlpool

¹ The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 279 (Sub-No. 6X).

Street. The City of Niagara Falls, New York owns the railroad overpass crossing Whirlpool Street. The right-of-way is located in an urban area. Except for the Niagara River gorge (located under the Bridge), the topography of the surrounding area is relatively level.

The Bridge first opened to both rail and pedestrian traffic in 1897 when it replaced an earlier bridge at the same location. The Bridge is of two-hinged spandrel-braced arch design. The Bridge and the railroad overpass over Whirlpool Street are the only structures located on the Line. CNR does not anticipate that the abandonment would result in any alterations to the Bridge or the overpass. CNR understands that NFBC has no intention of removing the Bridge, which continues to be an important route for vehicular traffic between the U.S. and Canada.

To the best of CNR's knowledge, no rail customer has ever been served directly by the Line. The Line was previously used by CNR as one of several available routes for through traffic over the international border. CNR has determined that other routes are more efficient for its operations. There has been no regularly scheduled freight service on the Line since 2004, and no freight movements of any kind for at least five years. There is no reasonable possibility for the development of new rail freight traffic on the Line.

The National Railroad Passenger Corporation (Amtrak) uses the Line for its "Maple Leaf" service, which operates twice a day in conjunction with VIA Rail Canada. This service is expected to continue following CNR's abandonment of the Line. CNR leases the rail deck of the Bridge (including the Canadian portion of the deck) from NFBC. If the Board should approve this abandonment, CNR expects to execute an agreement with NFBC providing for termination of the lease upon consummation of its abandonment of the Line. According to CNR, it owns the rail, bridge ties, and other track material on the Line. CNR currently maintains the Line, at its own expense, for the benefit of continued Amtrak operations. If the Line is abandoned, CNR intends to convey any legally transferrable interest it may have in the rail and other track materials to Amtrak or to another interested party for the purpose of providing continued passenger rail operations.

Even if rail operations are not continued over the Line, CNR understands that NFBC does not intend to disturb the Bridge, which will remain in place. There are pedestrian walkways on the lower level of the Bridge. The short portion of the Line to the east of the Bridge (in the City of Niagara Falls, New York) is an urban area adjacent to city streets. CNR does not believe that any interest exists for use of the Line as a recreational trail. Such a trail would be duplicative of existing parallel walkways located on the lower deck of the Bridge.

Diversion of Traffic

As discussed above, CNR indicates that there has been no regularly scheduled freight service over the Bridge since 2004, and no freight movements of any kind for at least five years. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting

materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

Salvage / Abandonment Activities

CNR intends to convey any legally transferrable interest it may have in the rail and other track materials to Amtrak or another interested party to provide continued passenger rail operations. Therefore, CNR would not conduct any salvage activities. CNR would only seek to salvage the rail and other track materials in the unlikely event that no such party undertook to continue passenger service.

CNR does not foresee any inconsistency with regional or local land use plans resulting from the proposed abandonment. The abandonment would have no impact to agricultural areas. The Niagara Falls State Park is located within two miles of the Line, but the abandonment would have no impact on the park. The proposed abandonment would have no adverse effect upon public health or safety. There are no known hazardous waste sites or spills located along the right-of-way.

CNR does not believe that any federally listed threatened or endangered species are present in the area that would be adversely affected by the proposed abandonment. The U.S. Fish and Wildlife Service (USFWS) website indicates that the Eastern prairie fringed orchid may be present in Niagara County. The Eastern prairie fringed orchid is listed as a threatened species. It is unlikely that the proposed abandonment would affect any habitat for the orchid, as most of the Line is located on a bridge deck that is not hospitable to vegetation. CNR has no plans to alter the portion of the Line found on land owned by NFBC and the City of Niagara Falls adjacent to the U.S. side of the Bridge.

The New York State Department of Environmental Conservation has indicated, based on the information provided that the proposed abandonment would not involve any physical alteration of the rail line or the bridge, that there is no inconsistency between the proposed abandonment and applicable state water quality standards. No permits under Section 402 of the Clean Water Act or the State Pollutant Discharge Elimination System would be required. The abandonment would not affect any land or water uses in a designated Coastal Zone Management Area.

The U.S. Army Corps of Engineers (Corps) has indicated that it does not have jurisdiction in the abandonment as proposed and that no permit would be required from the Corps. The abandonment would not entail work in, over, and/or under the navigable waterway of the Niagara River. CNR does not anticipate discharge of any materials into navigable waters.

OEA believes that any air emissions associated with abandonment activities would be temporary and would not have a significant impact on air quality. Noise associated with

abandonment activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts

HISTORIC REVIEW

CNR submitted an historic report as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)] and served the report on the New York State Office of Parks, Recreation and Historic Preservation (SHPO) pursuant to 49 C.F.R. § 1105.8(c). The SHPO has reviewed the historic report and indicated that the Bridge meets eligibility criteria for listing on the National Register of Historic Places (National Register). Based on the information provided, the SHPO concurs that the proposed abandonment would have no adverse effect upon cultural resources in or eligible for inclusion in the National Register.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, we have determined that the proposed abandonment would not affect historic properties within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's historic report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at <http://www.stb.dot.gov>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have ancestral connections to the project area.² The database indicated that three federally recognized tribes (the Seneca Nation of New York, Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York) may have knowledge regarding properties of traditional religious and cultural significance within the APE of the proposed abandonment. Accordingly, OEA is sending a copy of this EA to those tribes for review and comment.

CONDITIONS

We recommend that no environmental conditions be imposed on any decision granting abandonment authority.

² Native American Consultation Database, <http://home.nps.gov/nacd/> (last visited June 25, 2012).

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment of the Line, the right-of-way may be suitable for other public use. A request containing the requisite 4-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

Because it is CNR's intention to transfer its interests in the Line to Amtrak or another interested party to provide continued passenger rail operations, CNR seeks exemption from the public use condition. CNR's request will be addressed in the Board's final decision.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send original and two copies to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Kenneth Blodgett, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-279 (Sub-No. 6X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Kenneth Blodgett by phone at (202) 245-0305, fax at (202) 245-0454, or e-mail at blodgetk@stb.dot.gov.

Date made available to the public: June 29, 2012.

Comment due date: July 27, 2012.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment