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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 476)

BNSF RAILWAY COMPANY—DISCONTINUANCE—IN IRON AND CRAWFORD COUNTIES, MO.

Digest:[1] BNSF Railway Company is permitted to terminate service over a 46-mile line of railroad, known as the Lead Line, in Iron and Crawford Counties, Mo.

Decided: August 17, 2011

On April 29, 2011, BNSF Railway Company (BNSF) filed an application under 49 U.S.C. § 10903 for permission to discontinue service over a 45.84-mile line of railroad known as the Lead Line (the Line), extending from milepost 87.60, at Cuba, Mo., to the end of the line at milepost 133.42, near Buick, Mo.,[2] in Iron and Crawford Counties, Mo. Notice of the filing was served and published in the Federal Register (76 Fed. Reg. 29,030) on May 19, 2011. No protests against the proposed discontinuance were filed. We will grant the request for discontinuance authority, subject to standard employee protective conditions.

BACKGROUND

According to BNSF, the Line is contaminated with lead, and a former shipper, Doe Run Resources Corporation[3] (Doe Run), is the source of the contamination. BNSF states that the Line was embargoed on December 2, 2002, in order to conduct environmental remediation ordered by the State of Missouri at the Cuba Yard, which provides access to the Line. BNSF explains that the embargo was extended as a result of subsequent environmental studies, which determined that additional remediation was needed to bring the Line into compliance with

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[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] The line is 45.84 miles in length, not 45.82, because one of the segments is longer than the mileposts indicate. The line also has approximately 6.1 miles of sidings.

[3] BNSF refers to both Doe Run Resources Corporation and The Doe Run Company. We assume that they are related entities and refer to both as Doe Run.

Missouri state law. The embargo remains in effect,[4] and, as a consequence, there are no active customers on the Line.

TRAFFIC, OPERATIONS, AND REVENUES

BNSF provides base year carload and revenue data for the period January 2010 through December 2010, and forecast year carload and revenue data for the period April 2011 through March 2012. Because there were no freight operations on the Line during the base year, no freight revenues are attributable to the Line. For the forecast year, BNSF assumes that the same level of traffic that moved on the Line prior to the embargo would return to the Line, and it inflates the revenues by 3% per year. This results in forecast year carloads of 488 and revenues of $1,864,178 (which includes a small amount of revenue from leases and permits). BNSF estimates the same traffic level and revenues for the projected "subsidy year."[5] We will accept BNSF's figures.

AVOIDABLE COSTS

Avoidable costs are costs that an applicant will cease to incur if it discontinues service over a line. BNSF submitted data showing avoidable on-branch costs for the base and forecast years. These include: maintenance-of-way and structures;[6] maintenance of equipment, including depreciation; transportation; freight car costs (other than return); return on value-locomotives; and return on value-freight cars. BNSF reports total avoidable on-branch costs of $366,720 for the base year, and projects costs of $1,134,285 for the forecast year and the subsidy year. In addition, BNSF reports total avoidable off-branch costs of $0 for the base year and projects costs of $992,577 for the forecast year and the subsidy year. Total avoidable costs are $366,720 for the base year, and $2,126,862 for the forecast year and the subsidy year. We accept BNSF's avoidable costs.

LINE CONDITION AND REHABILITATION

The application states that a number of BNSF employees and contractors have filed personal injury claims against BNSF alleging exposure to lead during the transportation of lead

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[4] Prior to the embargo, the customers on the line were Doe Run; Solvay Minerals, Inc.; Penoles Metals & Chemicals; American Minerals, Inc.; Guardian Industries Corporation; Scott Tie Company, Inc.; Noranda, Inc.; and International Paper.

[5] The "subsidy year" is defined in our regulations as "any 12-month period for which a subsidy agreement for continued rail service has been negotiated and is in operation." 49 C.F.R. § 1152.2(m).

[6] We note that BNSF's claimed maintenance of way cost of $8,000 per mile was not calculated as required by 49 C.F.R. § 1152.32 and 49 C.F.R. § 1152.33. While this error is immaterial here, we caution parties to ensure that the evidence submitted conforms to our regulations.

concentrates over the Line. Multiple investigations, which were conducted by Applied Engineering & Science, Inc. and AECOM Environment (AECOM), revealed lead contamination on the Line. AECOM estimates that the remediation needed to reduce lead concentrations sufficiently to reopen the Line would cost, at minimum, $2,180,000. BNSF states that prior to reopening the Line, it would need to conduct additional investigations to ensure that the health of its employees and contractors would be protected. Such investigations could further increase the cost of remediating the Line.

BNSF explains that no maintenance has been performed on the Line since the 2002 embargo, and, consequently, numerous portions of the Line are out of service due to blocked drainage caused by falling rocks, washouts, defective ties, and paved-over crossings. BNSF submits that, in addition to the lead remediation costs above, an investment of $23,818,000 to address maintenance deficiencies would be required to reopen the Line.

We accept BNSF's forecast and subsidy year costs of $25,998,000 for rehabilitation costs to reopen the Line.

OPPORTUNITY COSTS

Opportunity costs (or total return on value of road property) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. Under Abandonment Regulations–Costing, 3 I.C.C.2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of: (1) allowable working capital; (2) the net liquidation value (NLV) of the line; and (3) current income tax benefits (if any) resulting from abandonment. The investment base (or valuation of the road properties) is multiplied by the current nominal rate of return to yield the nominal return on value.[7] The nominal return is then adjusted by applying a holding gain (or loss) to reflect the increase (or decrease) in value a carrier will expect to realize by holding assets for 1 additional year.

BNSF uses 15.58% to represent the pre-tax cost of capital for the railroad industry. BNSF's actual calculation for determining the total return on value relies on three items: (1) working capital ($41,352); (2) the income tax consequences ($0); and (3) the NLV of its road property ($4,114,689). BNSF identifies no holding gain or loss. We accept BNSF's opportunity cost of $647,511.

SUMMARY OF COST AND REVENUE EVIDENCE

For the entire line, in the forecast year, BNSF will realize revenues of $1,864,178 and incur avoidable costs of $2,126,862, resulting in a forecast year operating loss of $262,684.

[7] Under 49 C.F.R. § 1152.34(d), the rate of return used to calculate return on value represents the individual railroad's current pre-tax nominal cost of capital. Our most recent after-tax cost of capital finding for the railroad industry is used as a basis for developing the appropriate nominal rate of return.

When the total return on value is considered, the estimated forecast year loss from operations is $910,195. When the costs to rehabilitate the Line are considered, the estimated subsidy payment is $26,926,837. See the Appendix to this decision.

ALTERNATIVE TRANSPORTATION

BNSF claims that the remaining shippers have access to rail service by Union Pacific Railroad Company at nearby locations, and that competitive and effective motor carrier service is readily available. BNSF states that the former BNSF traffic has moved by truck during the embargo and that State Highways 19 and 48 run essentially parallel to the Line, while other highways run east-west through the area. BNSF points out that its former customers on the Line have been relying upon other rail and truck options, since they have not had access to its rail service since 2002.

SHIPPER AND COMMUNITY INTERESTS

No protests were filed expressing shipper or community concerns.

DISCUSSION AND CONCLUSIONS

The statutory standard governing an abandonment or discontinuance of service is whether the present or future public convenience and necessity permit the proposed abandonment or discontinuance. 49 U.S.C. § 10903(d). In implementing this standard, we must balance the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. Colorado v. United States, 271 U.S. 153, 168-69 (1926). Essentially, the Board must determine whether the burden on the railroad from continued operations is outweighed by the burden on shippers and the community from the loss of rail service.

As stated above, for the entire line, in the forecast year, BNSF will realize revenues of $1,864,178 and incur avoidable costs of $2,126,862, resulting in a forecast year operating loss of $262,684. When the total return on value is considered, the estimated forecast year loss from operations is $910,195. When the costs to rehabilitate the Line are considered, the estimated subsidy payment is $26,926,837. See the Appendix to this decision.

In contrast to the demonstrated burden that continued operation of the Line would impose on BNSF and on interstate commerce, the burden that the discontinuance would impose is minimal at best, given that the Line has not been used since 2002 and no shippers or community members filed protests against the discontinuance. Environmental remediation sufficient for the safety of employees and contractors and rehabilitation of the Line would require an expenditure that cannot be justified given the expected losses on the Line. We conclude that any harm to the former shippers and the community from the proposed discontinuance is outweighed by the demonstrated harm to BNSF and the burden on interstate commerce through continued operation of the Line. We will therefore grant the discontinuance application.

LABOR PROTECTION

In approving this discontinuance application, we must ensure that affected rail employees will be adequately protected. 49 U.S.C. § 10903(b)(2). The Board has found that the conditions imposed in Oregon Short Line—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979), satisfy the statutory requirements, and we will impose those conditions here.

ENVIRONMENTAL ISSUES

No traffic will be diverted as a result of the proposed discontinuance, and BNSF will not be permitted to salvage the Line as the result of our decision in this proceeding. Therefore, an Environmental Report and a Historic Report are not required. The Board will require BNSF to file an Environmental Report and a Historic Report if BNSF seeks authority in the future to abandon the Line.

Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking, and public use requests are not appropriate.[8]

The Board finds:

1. The present or future public convenience and necessity permit the discontinuance of service over the above-described Line, subject to the employee protective conditions set forth in Oregon Short Line.

2. Discontinuance of service over the Line will not have a serious, adverse impact on rural and community development.

3. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is granted, subject to standard employee protective conditions.

2. BNSF must promptly provide any interested persons the information they require to formulate an OFA to subsidize rail service over the Line.

3. An OFA under 49 C.F.R. § 1152.27(b)(1) to subsidize continued rail service must be received by the railroad and the Board by August 29, 2011, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and

[8] The offer of financial assistance (OFA) provisions for a subsidy to provide continued rail service apply to discontinuances.

49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by a $1,500 filing fee. 49 C.F.R. § 1002.2(f)(25).

5. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "**Office of Proceedings, AB-OFA.**"

6. Provided no OFA to subsidize continued rail service has been received, this decision will be effective on September 16, 2011. Any petition to stay or petition to reopen must be filed as provided at 49 C.F.R. § 1152.25(e).

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

APPENDIX

	Base Year operations	Forecast year operations	Projected Subsidy year operations
Revenues attributable for:			
1. Freight originated and/or terminated on branch	$0	$1,862,938	$1,862,938
2. Bridge Traffic			
3. All other revenue and income	$1,240	$1,240	$1,240
4. Total revenues attributable (lines 1 through 3)	$1,240	$1,864,178	$1,864,178
Avoidable costs for:			
5. On-branch costs (lines 5a through 5k)	$366,720	$1,134,285	$1,134,285
a. Maintenance of way and structures	$366,720	$366,720	$366,720
b. Maintenance of equipment		$11,559	$11,559
c. Transportation		$298,511	$298,511
d. General administrative			
e. Deadheading, taxi, and hotel			
f. Overhead movement			
g. Freight car costs (other than return on freight cars)		$332,634	$332,634
h. Return on value-locomotives		$120,516	$120,516
i. Return on value-freight cars		$4,345	$4,345
j. Revenue taxes			
k. Property taxes			
6. Off-branch costs	$0	$992,577	$992,577
a. Off-branch costs (other than return on freight cars)		$992,577	$992,577
b. Return on value-freight cars			
7. Total avoidable costs(line 5 plus line 6)	$366,720	$2,126,862	$2,126,862
Subsidization costs for:			
8. Rehabilitation		$25,998,000	$25,998,000
9. Administration costs (subsidy year only)			$18,642
10. Casualty reserve account			
11. Total subsidization costs (lines 8 through 10)	$0	$25,998,000	$26,016,642
Return on value:			
12. Valuation of property (lines 12a through 12c)	$0	$4,156,041	$4,156,041
a. Working capital		$41,352	$41,352
b. Income tax consequences			
c. Net liquidation value		$4,114,689	$4,114,689
13. Nominal rate of return		15.58%	15.58%
14. Nominal return on value (line 12 times line 13)	$0	$647,511	$647,511
15. Holding gain (loss)		$0	$0
16. Total return on value (line 14 minus line 15)	$0	$647,511	$647,511
17. Avoidable loss from operations (line 4 minus line 7)	($365,480)	($262,684)	($262,684)
18. Estimated forecast year loss from operations (line 4 minus lines 7 and 16)		($910,195)	($910,195)
19. Estimated subsidy (line 4 minus 7,11, and 16)			($26,926,837)