

SERVICE DATE - APRIL 6, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-577X

MOHALL RAILROAD, INC.—ABANDONMENT EXEMPTION—IN BOTTINEAU,
RENVILLE, WARD AND McHENRY COUNTIES, ND

Decided: April 3, 2001

By petition filed December 19, 2000, Mohall Railroad, Inc. (MRI) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a portion of a line of railroad known as the Mohall Line, extending from milepost 5.25 to milepost 35.0, a distance of 29.75 miles in Bottineau, Renville, Ward and McHenry Counties, ND. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (65 FR 1372-73) on January 8, 2001, instituting an exemption proceeding. We will grant this unopposed exemption, subject to two environmental conditions and standard employee protective conditions.

BACKGROUND

MRI was formed in 1999 to acquire and operate The Burlington Northern and Santa Fe Railway Company's (BNSF) Mohall Line, which extends from milepost 5.25 near Granville, ND, to milepost 47.8 at Mohall, ND.¹ MRI states that, prior to the acquisition, the only active shippers on the Mohall Line were located at Mohall and Lansford, ND, on the north end of the line, while BNSF's connection to the line was at the south end at Granville. According to MRI, the configuration of the line made it unprofitable to operate and forced BNSF to place an embargo on the entire line in July 1999.

¹ See Mohall Railroad, Inc.—Acquisition and Operation Exemption—Line of The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33855 (STB served Mar. 31, 2000). BNSF, as successor to the Burlington Northern Railroad Company, is generally prohibited from abandoning in excess of 350 miles of rail lines in North Dakota, a mileage total BNSF has already reached. See section 402 of the Department of Transportation and Related Agencies Appropriation Act of 1982 (Pub. L. No. 97-102, 1982). This limitation applies to the abandonment of any BNSF lines in North Dakota, even after their sale to third parties, and would thus normally be applicable to the Mohall Line. However, by legislation effective October 5, 2000, Congress enacted a provision permitting the specific segment of track involved here to be abandoned without being counted against this 350-mile limitation. See Pub. L. No. 106-940, sec. 372.

According to MRI, the purpose of its acquisition of the line was to create a new connection with the Northern Plains Railroad (NPR) at Lansford and resume service to the active shippers at Lansford and Mohall. After its acquisition, MRI constructed a connection with NPR and contracted with NPR to provide service between Lansford and Mohall. As a result of this new operation, MRI states that rail service has been restored to all active shippers on the line and that over 123 carloads have been transported since the line reopened in June 2000. Petitioner states that, in contrast, BNSF handled only 45 carloads in the first 6 months of 1999.

MRI asserts that the new service via NPR renders the balance of the Mohall Line south of Lansford redundant and that abandonment will permit MRI to recycle the line's rail without depriving any shipper of rail service. According to petitioner, the communities on the portion of the line to be abandoned do not oppose its petition and the only active shipper on that portion—SunPrairie Grain at Glenburn, ND—no longer uses rail service and actively supports the abandonment. MRI submitted verified statements from SunPrairie Grain's general manager and chairman supporting MRI's abandonment petition.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment and discontinuance application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving petitioners of the costs of owning, maintaining, and operating the line [49 U.S.C. 10101(5), and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. The communities on the part of the Mohall Line to be abandoned do not oppose MRI's petition and the only active shipper on that portion no longer uses rail service and actively supports the abandonment request. The petition indicates that the proposed abandonment will not deprive any shipper of rail service.²

² In light of our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

Petitioner has submitted an environmental report with its petition, and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on February 16, 2001.

In the EA, SEA noted that the North Dakota Department of Health, Environmental Health Section (EHS) indicated that the proposed abandonment might have minor effects on state water sources, and that these effects can be controlled by proper salvage methods. SEA indicates that EHS' concerns include "minimal disturbance of banks and stream beds to prevent excess siltation, replacement and revegetation of the disturbed area as soon as possible after work has been completed, and caution to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. If the project will disturb more than 5 acres of soil, a stormwater permit may need to be obtained before salvage begins." In view of EHS' concerns, SEA recommends that the railroad, prior to undertaking salvage activities that will adversely affect state water sources, consult with EHS to develop proper salvage methods.

SEA also noted that the National Geodetic Survey (NGS) has indicated that the proposed abandonment could potentially affect 19 geodetic station markers. SEA therefore recommends that, if abandonment activities will disturb or destroy these station markers, the railroad shall notify NGS not less than 90 days prior to commencement of such activities.

No comments to the EA were filed by the March 16, 2001 due date. We will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note, however, that no one has sought a public use condition, and none will be imposed.³

³ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by January 28, 2001.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of MRI's line described above, subject to the employee protective conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that MRI: (1) consult with EHS to develop proper salvage methods prior to undertaking salvage activities that will adversely affect state water sources; and (2) notify NGS not less than 90 days prior to commencement of abandonment activities that will affect geodetic station markers.

2. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)⁴ to allow rail service to continue must be received by petitioner and the Board by April 16, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

3. 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.”**

4. Provided no OFA has been received, this exemption will be effective on May 6, 2001. Petitions to stay must be filed by April 16, 2001, and petitions to reopen must be filed by April 26, 2001.

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), MRI 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 MRI's filing of a notice of consummation by April 6, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

⁴ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).