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SERVICE DATE – JULY 7, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-850X

ST. CROIX VALLEY RAILROAD COMPANY–ABANDONMENT AND
DISCONTINUANCE OF SERVICE EXEMPTION–IN PINE AND KANABEC
COUNTIES, MN

Decided: June 27, 2003

By petition filed on March 19, 2003, St. Croix Valley Railroad Company (SCXY) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to: (1) abandon its rail easement over a line of The Burlington Northern and Santa Fe Railway Company (BNSF) between milepost 58.3 at Mora Junction (Brook Park) and milepost 47.6 at Mora, a distance of 10.7 miles, and (2) discontinue rail service pursuant to overhead trackage rights over a rail line of BNSF between Hinckley and Mora Junction (Brook Park), a distance of 8.2 miles, in Pine and Kanabec Counties, MN. Notice of the filing was served and published in the Federal Register on April 8, 2003 (68 FR 17150). The exemption will be granted, subject to environmental and standard employee protective conditions.

BACKGROUND

According to SCXY, three shippers are served on this 18.9-mile line; however, the 10.7-mile segment of line between Mora Junction (Brook Park) and Mora is under embargo due to unsafe track conditions, effective July 22, 2002. SCXY states that, despite its best efforts, the traffic and revenues of the three shippers on the line, Engineered Polymers (EP), Lakes Gas (LG), and Central Rivers Coop (CRC), have declined significantly since 2000, as shown below:

| <u>Time Period</u> | <u>Customer</u> | <u>Carloads</u> | <u>SCVRC Revenue</u> |
|-------------------------------|-----------------|-----------------|----------------------|
| 2000 | EP | 86 | \$32,508 |
| 2000 | LG | 37 | 13,986 |
| 2000 | CRC | 28 | 10,584 |
| <u>Year 2000 Total</u> | | 151 | \$57,078 |

| <u>Time Period</u> | <u>Customer</u> | <u>Carloads</u> | <u>SCVRC Revenue</u> |
|-------------------------------|-----------------|-----------------|----------------------|
| 2001 | EP | 58 | \$21,924 |
| 2001 | LG | 37 | 13,986 |
| 2001 | CRC | 11 | 4,158 |
| <u>Year 2001 Total</u> | | 106 | \$40,068 |

According to SCXY, this represents a 30% decline of traffic and revenues from 2000 to 2001. The traffic and revenue decline continued in 2002. CRC closed its Mora fertilizer-receiving facility during the second quarter of 2001, and as of July 22, 2002, the date the embargo became effective, EP accounted for 7 carloads and revenues of \$2,646, and LG accounted for 21 carloads and revenues of \$7,938. Therefore, the 2002 totals as of July 22, were 28 carloads and revenues of \$10,584. Also, SCXY states that LG has moved its rail unloading facilities off the line. Finally, SCXY contends that future traffic will be minimal with only EP remaining on the line and no likelihood of any additional traffic.

SCXY states that the line needs considerable repair; it asserts that \$472,596 is required to rehabilitate the Mora Junction-Mora line to Federal Railroad Administration Class 1 safety standards.¹ According to SCXY, revenues are much too limited to offset these costs.

SCXY asserts that there would be little adverse effect on shippers and other local interests from a grant of this exemption. Petitioner claims that CRC and LG have already switched permanently to the use of alternative transportation and EP has been making use of a trucking alternative, as evidenced by the decline in its rail traffic to only 7 carloads during 2002 before the embargo. Moreover, the highways serving the area (Minnesota routes 23 and 65), are arterial highways in good condition and convenient to the shippers' locations at Mora.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail

¹ SCXY provides detailed evidence showing that crosstie replacement would cost \$265,806, switch tie replacement \$5,000, crossing surface renewal \$44,400, and ballast and surfacing \$157,390, for a total of \$472,596.

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 the 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 the application process, 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 SCXY of the expense of maintaining a line that generates marginal amounts of traffic and revenue and by allowing SCXY to apply its assets more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because two of the shippers on the line appear to no longer use petitioner's service, and all three shippers on the line have adequate transportation alternatives.² Nevertheless, to ensure that all shippers are informed of the Board's decision, SCXY will be required to serve a copy of this decision on each shipper within 5 days of the service date and certify to the Board that it has done so.

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

SCXY 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. The Board's 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 May 16, 2003, and requested comments by June 16, 2003.

In the EA, SEA notes that the State Historic Preservation Officer has not completed its assessment of the potential impact of this action on historic resources. Accordingly, SEA recommends that SCXY retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

² Given the finding regarding market power, it is not necessary to determine whether the proposed transaction is limited in scope.

No comments to the EA were filed by the June 16, 2003 due date. Accordingly, the condition recommended by SEA in the EA will be imposed. The proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. No one has sought a public use condition, and none will be imposed.³

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 the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the condition that SCXY shall retain its interest in and take no steps to alter the historic integrity of the right-of-way until completion of the section 106 process of the NHPA.
2. SCXY is directed to serve a copy of this decision on all shippers on the line within 5 days after the service date of this decision and to certify to the Board that it has done so.
3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)⁴ to allow rail service to continue must be received by the railroad and the Board by July 17, 2003, 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 \$1,100 filing fee. See 49 CFR 1002.2(f)(25).
4. 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.**”
5. Provided no OFA has been received, this exemption will be effective on August 6, 2003. Petitions to stay must be filed by July 22, 2003, and petitions to reopen must be filed by August 1, 2003.

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 April 28, 2003.

⁴ See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997).

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), SCXY 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 SCXY's filing of a notice of consummation by July 7, 2004, 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 Nober.

Vernon A. Williams
Secretary