

SERVICE DECEMBER 16, 1996

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-337 (Sub-No. 5X)

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION--
ABANDONMENT EXEMPTION--IN WABASHA AND OLMSTED COUNTIES, MN

Decided: December 9, 1996

Dakota, Minnesota & Eastern Railroad Corporation (DM&E) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903-04¹ to abandon its 13.03-mile Plainview Branch Line located between milepost 3.07, at Plainview Junction, and milepost 16.1, at Plainview, in Olmsted and Wabasha Counties, MN. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the petition, subject to labor protective conditions and a public use condition.

BACKGROUND

The Plainview Branch line is located in a rural area of Minnesota and traverses the towns of Viola, Elgin, and Plainview. The rail line includes 17 grade crossings and 13 private crossings. Due to bridge failure, DM&E embargoed the line on June 27, 1995. Prior to that time, according to DM&E, three shippers used the line to move 167 carloads in 1994 and 93 carloads in the first six months of 1995. DM&E estimates rehabilitation costs of \$1,038,347 to restore the line to service and estimates the salvage value of the line's land and track at \$658,360. DM&E maintains that its assets would be more prudently allocated to other portions of its railroad because there is no need or demand for service on the line. According to DM&E, the shippers have terminated their use of rail service and have diverted their traffic to motor common carriers. DM&E expresses its view that there is no prospect for developing additional traffic and that the elimination of the numerous highway crossings will benefit the communities and the public. DM&E states that the shippers and the public have been made aware of its intent to abandon, and that no one opposes the proposed abandonment.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior 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 the abuse of market power.

¹ In its petition, DM&E seeks an exemption from 49 U.S.C. 10903-04. DM&E has not supported its request for exemption from section 10904 involving offers of financial assistance. Accordingly, we will limit the exemption to section 10903.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of abandoning this line, an exemption will reduce regulatory barriers to exit and provide for the expeditious handling and resolution of this proceeding [49 U.S.C. 10101(2), (7), and (15)]. By allowing DM&E to avoid the expense of rehabilitating this line and to apply its assets more productively elsewhere on its system, an exemption will promote safe and efficient rail transportation, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected [49 U.S.C. 10101(4)].

Because the former shippers apparently have adequate alternative transportation and are already using motor common carriers for their transportation needs, we find that regulation is not necessary to protect the shippers from an abuse of market power. Nevertheless, to ensure that the former shippers are aware of the status of this line, we will require DM&E to serve them with a copy of this decision within 5 days of the service date of this decision and to certify to the Board that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope, although the proposed abandonment appears to satisfy that criterion as well.

UTU requests imposition of labor protective conditions. DM&E states that the proposed abandonment will have no effect on labor. Under 49 U.S.C. 10502(g), however, we may not use our exemption authority to relieve a carrier of a 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.

DM&E has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to file comments concerning the energy and environmental effects of the proposed abandonment. 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 effect of the proposed abandonment on environmental and historic resources. SEA served an environmental assessment (EA) on October 28, 1996, recommending that no environmental or historic conditions be imposed on the abandonment authority. No comments were received in response to the EA. We will impose no environmental or historic conditions on the proposed abandonment. Based on SEA's recommendation, which we adopt, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or conservation of energy resources.

SEA has indicated that the right-of-way may be suitable for other public use. The Minnesota Department of Transportation (MNDOT), Department of Natural Resources (DNR), and the counties of Olmsted and Wabasha seek imposition of a 180-day public use condition, under 49 U.S.C. 10905 and the corresponding regulations at 49 CFR 1152.28, in order to acquire the right-of-way for alternative transportation, transmission, and recreational trail use. They request a 180-day public use

negotiation period to allow the necessary time to study potential corridor uses, to obtain right-of-way appraisals, and to negotiate with the railroad. The parties have justified imposition of a public use condition by showing: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for imposition of the time period. See 49 CFR 1152.28(a)(2). A 180-day public use condition will be imposed.

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 by DM&E of the above-described 13.03-mile rail line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979) and (2) the condition that DM&E keep intact all of the right-of-way underlying the track, including bridges, trestles, culverts, and similar structures (but not the track or track materials) for a period of 180 days from the effective date of this decision to enable any state or local government agency, or other interested party, to negotiate the acquisition of the right-of-way for public use.

2. Notice will be published in the Federal Register on December 16, 1996.

3. DM&E must serve a copy of this decision on the former shippers within 5 days after the service date of this decision and certify to this Board that it has done so.

4. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 15, 1997.

5. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)² and requests for interim trail use/rail banking under 49 CFR 1152.29 must be filed by December 26, 1996. Petitions to stay must be filed by December 31, 1996. Petitions to reopen must be filed by January 10, 1997.

6. If a formal expression of intent to file an OFA has been timely submitted, an OFA to allow rail service to continue must be received by the railroad and the Board within 30 days after publication, subject to time extensions authorized under 49 CFR

² See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987) for current regulations. We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued a notice of proposed rulemaking in Abandonment and Discontinuance of Rail Lines and Rail Transportation under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Mar. 15, 1996). We have received comments from the public on our proposed rules and are in the process of adopting final rules, which we expect to issue shortly. Until final rules are adopted and become effective, however, the current regulations will apply if there is an OFA. See Consolidated Rail Corporation--Abandonment Exemption--in Hudson County, NJ, STB Docket No. AB-167 (Sub-No. 1158X) (STB served July 25, 1996).

1152.27(c)(2)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2).

7. 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."**

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams
Secretary