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SERVICE DATE - NOVEMBER 14, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-497 (Sub-No. 2X)

MINNESOTA NORTHERN RAILROAD, INC.--ABANDONMENT EXEMPTION--  
BETWEEN REDLAND JUNCTION AND FERTILE, IN POLK COUNTY, MN

Decided: November 12, 1997

By petition filed on July 29, 1997, Minnesota Northern Railroad, Inc. (MNN), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 20.6-mile line of railroad extending from milepost 65.7 near Redland Junction to milepost 45.1 near Fertile, in Polk County, MN. We will reference the line as the Fertile Branch or simply the Line. Notice of the petition was served and published in the Federal Register at 62 FR 44031 on August 18, 1997. By decision served September 19, 1997, requests filed jointly by MNN, Fertile Grain Inc. (FGI), and Farmers Co-op (Farmers) for a protective order and a proposed procedural schedule were granted.

Comments in opposition were filed by State Senator Roger Moe, State Representative Bernard Lieder, Polk County Board of Commissioners, and Red Lake County Board of Commissioners. FGI filed its opposition statement on September 25, 1997, wherein it was stated that Farmers decided not to participate further in the proceeding. MNN filed replies on October 10 and 14, 1997.

A request for a public use condition was filed by the Minnesota Department of Transportation (MNDOT). We will grant the petition for abandonment exemption, subject to labor protective conditions, an environmental condition, and a public use condition.

BACKGROUND

The Fertile Branch is one of five lines acquired on December 28, 1996, by MNN from the Burlington Northern Railroad Company (BN) in Minnesota Northern Railroad, Inc.--Exemption--Acquisition and Operation of Rail Line and Incidental Trackage Rights from Burlington Northern Railroad Company, STB Finance Docket No. 33315 (STB served Mar. 12, 1997).<sup>1</sup> MNN claims that, even though it managed to offer its service during one of Minnesota's worst winters, traffic on the Line declined as shippers diverted their traffic to truck transportation causing MNN to operate

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<sup>1</sup> See also RailAmerica, Inc.--Continuance in Control Exemption--Minnesota Northern Railroad, Inc., STB Finance Docket No. 33316 (STB served Mar. 12, 1997).

the Line at a loss. Prior to its acquisition of the Line, MNN says that BN moved the following carloads each year:

<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
194	502	335	213	237	177

Four shippers, FGI,<sup>2</sup> Fertile Coop Elevator (Coop), J. R. Dale Supply (Dale), and Tom Walski, accounted for 83 carloads of traffic from January 1, 1997, to May 31, 1997. All of the shippers are located at the end of the Line near Fertile. Traffic consists of outbound grain and inbound fertilizer.

According to MNN witness Robin Bergeron, in February 1997, FGI projected it would ship 300 carloads of grain (mostly wheat) in 1997. FGI, however, tendered only 79 carloads by May 31, 1997, and had shipped the equivalent of 80 rail carloads by truck, revising downward its previous projection for the year to 220 carloads. Coop was expected to ship about 50 carloads in 1997; however, it has tendered no traffic to MNN and apparently is trucking grain to its elevator at Winger, MN, for transloading to the Canadian Pacific Railroad System. Dale projected that it would receive between 15 to 20 carloads of anhydrous and dry fertilizer in 1997. Dale, however, received only 3 carloads between January and May, 1997, diverting some of its traffic to trucks. Tom Walski received one car for unloading. This was expected to be a one-time move.

MNN states that, since they have acquired the Line, the shippers have used truck service more than rail service. MNN indicates that even though the shippers project that they will ship about 300 carloads in 1997, prorating their use of the Line to the filing date of this abandonment petition would result in only about 200 carloads shipped on the Line in 1997. MNN says that, based on the Line's historic traffic levels, it has projected carrying 250 carloads during the forecast year (July 1, 1997, to June 30, 1998). MNN has submitted detailed revenue and cost evidence based on its projection of 250 carloads in the forecast year.<sup>3</sup>

MNN finds that for the forecast year it would have a total operating loss of \$79,380, of which an avoidable loss of \$45,179 is directly related to operations (gross revenues of \$135,120 minus \$180,299 on-branch costs). MNN also calculates an opportunity cost of \$37,113, based upon the Line's net liquidation value of \$283,000,<sup>4</sup> and estimates that it would need to spend \$667,419 to rehabilitate the Line to Federal Railroad Administration Class 1 safety standards.

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<sup>2</sup> Fertile Grain Inc. is referred to by MNN as "Fertile Grain Elevator" and appears to be the same party.

<sup>3</sup> MNN indicated that, to permit the Board to consider fully all aspects of the proposed abandonment, it voluntarily submitted essentially all of the information required in an abandonment application.

<sup>4</sup> Verified Statement of Harry A. Snyder.

MNN maintains that continued operation of the Fertile Branch threatens service on its remaining rail lines and produces insufficient revenue to justify its continued operation.

In opposition to the abandonment, FGI argues that it is MNN's unreliable rail service and inadequate supply of cars that has caused FGI's diversion of traffic to trucks.<sup>5</sup> FGI states that, while it is the only shipper opposing the abandonment, it accounts for some 90 percent of the traffic generated on the Line. Even with MNN's inability to supply cars and its unreliable service that deters the use of rail because of fear of incurring trading penalties on account of late delivery, FGI states that it was able to generate 113 cars of grain in the first 7 months of 1997. FGI adds that, during the same 7-month period, it sold 370 truckloads of grain which, at the rate of 4 trucks to a railcar, is the equivalent of another 93 railcars. FGI argues that a volume of grain equal to over 200 railcars in the first 7 months of 1997 leaves little room to question its contention that, given dependable rail service and an adequate supply of cars, the Line can easily generate 300 or more cars per year. FGI submits that, at 300 railcars a year, the Line would show a modest operating profit.

In addition, FGI challenges MNN's cost evidence. FGI argues that: (1) the Line does not require \$667,000 in rehabilitation expense to attain Class I FRA track standards; (2) maintenance of way includes double counts of labor costs; (3) estimated rather than actual fuel consumption costs were used; and (4) net liquidation value omits necessary costs of tie clean-up.

Farmers Elevator Association of Minnesota (FEAM) (in support of FGI), Minnesota State Senator Roger D. Moe, and State Representative Bernard L. Lieder oppose the abandonment and state that they are concerned that an additional 1200 truck movements per year will result from the abandonment.

## DISCUSSION AND CONCLUSIONS

Because the shipper opposition is based on its challenge to MNN's revenue and cost estimates, we will address those issues first.

### Revenues and Costs

Revenues. MNN contends that traffic levels on the Line will not support a continuation of rail operations. For the base year, 1996, when the BNSF owned and operated the line, MNN presents the data for BNSF's operations during that year. In 1996, BNSF carried 177 carloads at \$540 per car (total of \$95,580) moved over the Line. MNN projects 250 carloads at \$540 per car, a total of \$135,000, during the forecast year. Protestant, FGI, contends that much of the blame for the lack of revenues lies with MNN's inability to provide cars and service on a timely and reliable basis.

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<sup>5</sup> MNN owns no grain cars and relies on The Burlington Northern and Santa Fe Railway Company (BNSF) to supply cars.

FGI contends that if service were more reliable at least 300 carloads of traffic could be carried during the forecast year. At \$540 per car, this would translate to \$162,000 in revenue.

FGI has failed to convince us that, even if it could receive ordered rail cars and reliable car service, it and the other shippers would ship a total of 300 rail cars in the forecast year. FGI claims that rail rates are lower than motor rates on wheat delivered to Minneapolis/Duluth and thus it has an incentive to ship most of its wheat by rail. MNN disputes this claim and states that rail and motor rates on this wheat traffic are equal. The volume of traffic over the Line during the past 6 years and the downward trend in that volume supports MNN's estimate for rail use over FGI's estimate.

MNN supplied data provided to it by BNSF showing traffic levels between 1991 and 1996. These data indicate that the average number of carloads shipped over this 6-year period is 276 carloads. Over the past 4 years (1993 through 1997) an average of 241 carloads moved over the line. Based on that volume and that trend, it is unlikely that the 300 carload figure proposed by FGI would be realized during the forecast year. Indeed, in only 2 of the past 6 years (1992 and 1993) did the number of carloads exceed 300, or for that matter 250. Therefore, we are accepting MNN's 250-carload projection, which produces \$135,000 in revenue for the forecast year.

Avoidable Costs. Both MNN and FGI have submitted data showing avoidable on-branch costs for the forecast year.<sup>6</sup> These include: (1) maintenance of way and structures; (2) maintenance of equipment (including depreciation); (3) transportation expense; (4) freight car costs (other than return); (5) return on value for locomotives; and (6) property taxes. MNN's total avoidable on-branch costs for the forecast year are \$180,299, while FGI's figure is \$153,283. No avoidable off-branch costs were submitted by either party because the MNN does not have any trackage rights off-branch.

Neither party provides any cost data for general and administrative expenses, revenue taxes, deadheading, overhead movements, or holding gains for locomotives.<sup>7</sup>

We have examined all the evidence supplied by MNN and FGI on the question of the costs that MNN should be expected to incur in providing service on the Fertile Branch. These are "avoidable costs," i.e., they would be avoided if the Line were abandoned. We conclude that the avoidable costs of providing rail service on the Fertile Branch during the forecast year are \$174,713. The different elements of these costs are discussed below.

a. Maintenance of Way. MNN computes its cost of performing maintenance of "way and structures"--the roadway and associated structures, such as bridges--for the forecast year as

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<sup>6</sup> FGI did not provide any base year data.

<sup>7</sup> They also provide no freight car holding gains because MNN owns no freight cars.

\$105,386. This includes normalized maintenance of \$100,198 (\$4,864 per mile), based on a traffic level of 250 cars per year plus \$5,188 of depreciation expenses.

FGI argues that MNN's "normalized maintenance of way"<sup>8</sup> (MOW) estimate is excessive because it contains a three-man general maintenance crew that performs no work. FGI asserts that the general maintenance crew installs no ties, rail or ballast as evidenced by the fact that Mark D. Garvin, Chief Engineer of Rail America, included no material costs for these items in his budget. The labor costs of these functions, listed under "program track maintenance" and "Surfacing and Lining Track" and "Road Crossings" are almost the same as the labor costs also listed under "Normalized Maintenance." According to FGI, deleting these duplicate labor costs reduces the anticipated MOW cost to \$78,396, including depreciation. MNN replies that FGI misinterpreted the different duties and responsibilities of the normalized maintenance crews, on the one hand, and, on the other, the crews assigned the daily chores of maintaining and inspecting the line.

We agree with MNN that there has not been a double count of crew activities. MNN has incorrectly labeled spot or expensed maintenance items as "normalized maintenance." We accept MNN's normalized maintenance estimate except that we will eliminate the \$5,188 of depreciation expenses because depreciation cannot be charged to maintenance if normalized maintenance expenses are projected. Depreciation expense of the track accounts, i.e., ties, rails, ballast, etc., is allowable for abandonment purposes if the maintenance expenses for these accounts reflect spot or ordinary maintenance and do not reflect normalized maintenance. Excluding depreciation, our restated maintenance of way for the forecast year is \$100,198.

b. Maintenance of Equipment. MNN develops locomotive maintenance cost by taking direct labor and maintenance cost for the entire MNN (the Fertile Branch and all other MNN lines) over a 5-month period (\$32,829) and dividing that sum by the number of hours that the locomotives were operated (3,418 hours) to produce a \$9.61 per-hour of operation maintenance cost. MNN then computes a depreciation rate of \$2.84 per hour of operation.<sup>9</sup> MNN projects that it will use 248 (4.77 hours per trip) locomotive hours during the forecast year.<sup>10</sup> Multiplying that number of hours by \$9.61 and \$2.84 produces forecast maintenance and depreciation costs of \$2,383 and \$704, respectively. This results in a total forecast year equipment maintenance expense of \$3,088 (rounded).

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<sup>8</sup> Normalized maintenance of way is computed by determining the need for maintenance (here, by an inspection by MNN), and the cost of providing that future maintenance, "normalized" to treat the projected expenditures as if an equal sum were spent each year.

<sup>9</sup> This is based on an extrapolation of its annual depreciation rate for locomotives (3.75% per year) times the estimated replacement value during the forecast year of MNN's three locomotives (\$622,001) divided by 8,203 hours (based on extrapolating the 3,418 hours used over the first 5 months of 1997 for a full year).

<sup>10</sup> Based on one trip per week (52 trips).

FGI, using data from its records, contends that MNN has or will run less than weekly train service, namely 41 rather than 52 trains per year.<sup>11</sup> Using MNN's data of 4.77 hours per trip, \$9.61 per hour maintenance cost, and \$2.84 per hour depreciation expense, and 41 trips, FGI develops forecast maintenance and depreciation costs of \$1,879 and \$555, respectively. This totals \$2,435 (rounded).

The basic issue in dispute here (and in transportation costs as well) is how many trains are likely to be operated during the forecast year. MNN forecasts weekly service and contends in its reply statement that the previous owner of the Line (BNSF) ran weekly service, even if the protestant, FGI, did not always receive service.<sup>12</sup> We have no reason to believe that MNN would not run weekly service for the forecast year. We therefore are accepting MNN's projection of 52 trips with resulting equipment maintenance and depreciation costs totaling \$3,088.

c. Transportation Cost. MNN's transportation cost figure (\$21,752 for the forecast year) is based on the assumption that 52 trains will run during the forecast year and that each trip will take 4.77 hours, for a total of 248 hours. This cost consists of crew wages of \$13,387 (based on 496 man hours times \$26.99 per hour<sup>13</sup>), train fuel cost of \$8,241 (based on \$33.23 per hour times 248 hours), and small tools and supplies cost of \$124 (based on \$0.50 per hour times 248 hours).

FGI's transportation cost figure for the forecast year (\$14,802) is based on 41 trains per year at 4.77 hours per train, for a total of 196 hours. It consists of \$10,557 for crew wages (391 hours for the two-man crew times \$26.99 per hour), \$4,148 for fuel (\$21.21 per hour times 196 hours), and \$98 for small tools and equipment (\$0.50 per hour times 196 hours).

As we noted in our discussion of maintenance of equipment, we are accepting MNN's forecast of 52 trains per year. Using this number of trains per year, we accept MNN's crew wage figure of \$13,387 and its small tools and equipment figure of \$124.

In addition to the difference in the number of trains (and total hours) during the forecast year, fuel cost per hour figures developed by each party are substantially different. MNN bases its fuel cost per hour (\$33.23) on the General Manager's Agreement (GMA) industry wide analysis of costs of major railroads serving Chicago in 1982. FGI argues that this figure is too high because short lines are not always able to generate full horsepower usage and less use of a locomotive reduces fuel consumption. FGI reduces MNN's fuel cost to \$21.21 per hour by developing a ratio

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<sup>11</sup> These records indicate, according to FGI, that 43 trains were run during 1996 and, based on extrapolation of service through September 19, 1997, 39 trains will run during 1997. This translates to an average of 41 trains per year.

<sup>12</sup> See V.S. Snyder, at 1, in MNN's reply statement.

<sup>13</sup> The 496 hour figure assumes a two-man crew (248 hours times 2).

of repairs to fuel cost and an assumed lower throttle setting. It does not provide the calculations used to develop this number.

Neither party has presented actual fuel usage figures for the base year, which could be used to develop forecast year data. However, 49 CFR 1152.33(c)(ii) allows for locomotive fuel costs to be developed from GMA data. FGI does not challenge the basic underlying GMA data, only the fact that it should be adjusted to account for lower throttle usage. FGI, however, has failed to provide supporting data or otherwise justify its lower fuel cost figures. For this reason, we are accepting MNN's numbers.

Based on the above figures, we are accepting all of MNN's transportation cost numbers and conclude that transportation costs for the forecast year equal \$21,752.

d. Freight Car Costs. MNN does not own any freight cars. Therefore, all freight car costs are for car hire. Both MNN and FGI agree that the car hire cost per freight car is \$164.67. The only difference between the parties is MNN's use of 250 cars and FGI's use of 300 cars. Because we have accepted MNN's estimate of 250 carloads for the forecast year, we are accepting its figure of \$41,168 for freight car costs (\$164.67 times 250).

e. Return on Value and Holding Gains - Locomotives. Both MNN and FGI use a return on value figure per locomotive hour of \$12.52. This is based on the use of the 1995 pre-tax cost of capital rate for the railroad industry (17.5%, using a 37% combined Federal and state tax rate). As with other costs, MNN multiplies this by 248 hours (52 trips at 4.77 hours per trip) and FGI multiplies this figure by 196 hours (41 trips at 4.77 hours per trip). Neither party computes a holding gain for locomotives.

Our restatement for the forecast year uses the 248 hours calculated by MNN. We are also using the 1996 (rather than the 1995) pre-tax cost of capital rate (17.7%, using a combined Federal and state tax rate). This slightly higher cost of capital rate produces a per-hour cost of \$12.67.<sup>14</sup> When multiplied by 248 hours this results in a locomotive return on value of \$3,142.

Our regulations require that the return element developed above be offset by the holding gain for the locomotive during the forecast year. The regulations further state that when a holding gain is not specifically determined for locomotives, the most recent Gross Domestic Product (GDP) deflator shall be used. MNN indicates that the depreciated replacement value for the locomotive is \$587,023. When multiplied by the 1996 pre-tax GDP deflator (3.1% using the 37% combined

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<sup>14</sup> This is developed from data contained in MNN's submission by taking the depreciated replacement value for the locomotive for the forecast year, \$587,023, multiplied by the 17.7% cost of capital rate to obtain a total return of \$103,903 for the locomotive in all operations. This number is divided by 8,203 annual locomotive hours to obtain the per-hour cost of \$12.67. Both parties in this proceeding accept the value of the locomotive and the number of total locomotive hours.

Federal and state tax rates), this produces a holding gain of \$18,198. This translates to a holding gain for the Line of \$435.<sup>15</sup>

f. Property Taxes. Both MNN and FGI use property taxes equal to \$5,800 for the forecast year. We are, therefore, using the same figure.

Off-Branch Avoidable Costs. There are no off-branch costs associated with the Line.

#### Rehabilitation Costs

Rehabilitation costs were developed for MNN by its chief engineer, Mr. Garvin. Mr. Garvin inspected the Line at some time prior to December 28, 1996. According to MNN, the Line is FRA excepted track and needs to be rehabilitated to reach FRA Class 1 condition. MNN claims the Line requires \$667,419 in rehabilitation costs, based upon RailAmerica's standard practice of contracting out all of the rehabilitation work.

Protestant FGI argues that rehabilitation expenses are unsupported and unnecessary because speeds of 10 mph or greater are maintained on the line. FGI states that MNN includes tie replacement at a constant rate 543 ties per mile, yet the railroad never conducted a study to determine actual needs for the line. Also, FGI cites the MNN's "Delay Reports" which show that the railroad has been operating from Crookston to Fertile at times ranging from 90 minutes to 120 minutes. This translates to operating speeds of 11.1 mph to 15.3 mph, according to FGI.

MNN replies that FGI's witness has not inspected the line, while its inspector has just completed another inspection of the Line confirming his earlier estimate. MNN also claims that the Line has further deteriorated since the last estimate because of the severe winter. MNN responds to FGI's use of the Delay Reports by noting that the records are not always maintained accurately.

We reject MNN's rehabilitation estimate and will allow no rehabilitation expenses for the purposes of this exemption proceeding. The railroad failed to support its contention that the Line falls below FRA Class 1 track standards and how to establish much rehabilitation would be required to bring the Line up to Class 1 standards. Although there is little doubt that the Line is in marginal condition, the railroad must provide substantive details to support its claims. MNN must describe how it determined the Line's current condition and how much rehabilitation is required to reach FRA Class 1 standards. The railroad has failed to do so.

#### Return on Value of Road Property

The return on value of road property (the opportunity cost of holding the property for an additional year) is determined by first computing the valuation of the road property and then

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<sup>15</sup> \$18,198 divided by 8,203 hours, times 196 hours.

multiplying that value by a rate of return element. A holding gain (or loss), representing the increase (or decrease) in value of the road property during the year due to inflation, is then added (or subtracted) to develop a total return on the value of road property.

Rate of Return. STB abandonment regulations found in 49 CFR 1152.34(d) allow the parties to use the Board's most recent cost of capital finding for the railroad industry (an after-tax number) as the basis for developing the appropriate pre-tax nominal cost of capital (rate of return) rate. In most cases, a 37% tax rate is used, consisting of the 35% Federal statutory tax rate and a 2% factor for state income taxes. Both parties use the 1995 pre-tax cost of capital rate with the 37% tax factor in their calculations (17.5%). Our restatement uses the 1996 pre-tax cost of capital rate with the 37% tax factor (17.7%). Thus, our calculations produce slightly higher return numbers.

Valuation of Road Property. MNN submitted data for the forecast year showing the value of the road property to be \$212,073, consisting of an NLV of \$283,000, income tax consequences of \$77,967, and working capital of \$7,040. FGI submitted data for the forecast year showing the value of the road property to be \$43,373, consisting of an NLV of \$44,000, income tax consequences of \$7,667, and working capital of \$7,040.

a. Net Liquidation Value (NLV) - MNN calculated an NLV of \$283,000, consisting of \$49,000 for real estate and \$234,000 for track. MNN estimated the cost of removal of track to be \$40 per net ton, based on the jointed light rail (more rail sections and OTM).<sup>16</sup> According to MNN, scrap ties are removed at a cost of \$1.00 per tie, and ties for reuse are removed for \$1.00 per tie plus an additional cost of \$2.00 per tie for storage and transportation to market. Also, crossing removal is estimated to be \$1,500 per crossing. MNN estimated total net track salvage at \$234,000.

FGI questions the use of a \$1.00 per tie removal cost compared to a \$4.00 per tie removal cost included under rehabilitation and maintenance. It states that the higher \$4.00 per tie removal cost should be used. This change would reduce the NLV to \$44,000. MNN replies that the tie removal cost used in rehabilitation and maintenance is higher than that shown for track removal because removing the entire track structure is easier than removing individual ties.

We reject FGI's claim that a higher cost of removal for ties be used. FGI has not shown why the higher tie removal cost is justified. FGI alleges the higher tie removal cost is based on stricter rules in Minnesota, but FGI fails to provide anything to support this assertion. MNN's response that it costs less to remove all of the ties during track removal than individually during maintenance is reasonable.

We accept MNN's NLV of \$283,000, consisting of real estate of \$49,000 and net track salvage of \$234,000.

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<sup>16</sup> OTM is other track material.

b. Income Tax Consequences - MNN computes income tax consequences for the forecast year as \$77,967. This represents the tax consequences (at a rate of 37%) resulting from the net proceeds from track disposal (\$234,000), plus the value of non-reversionary land (\$49,000), less book value of land (\$72,278), for a total of \$210,722. FGI does not indicate precisely how it arrives at its income tax figure of \$7,667. It appears, however, to be based on proceeds from track disposal equal to approximately \$44,000 plus the value of non-reversionary land (\$49,000), less book value of land (\$72,278), times 37%. Because we are accepting MNN's NLV figures in their entirety, we are using MNN's income tax consequence figure of \$77,967, which is correctly calculated.

c. Working Capital - The STB's abandonment regulations call for working capital to be equal to 15 days of avoidable on-branch costs (less depreciation and return). MNN computes working capital for the forecast year to be \$7,040, based on total avoidable costs (less depreciation and return) of \$171,301. FGI uses the same working capital number even though its projected expenses are lower. Based on our restatement of projected avoidable costs (less depreciation and return), we compute working capital to be \$7,021, as follows:

Avoidable on-branch costs before ROI and depreciation	\$174,713
Less locomotive depreciation expense (from work papers)	704
Less ROI for locomotives and freight cars	<u>3,142</u>
= Basis to compute working capital	\$170,867
Times 15/365 = Working Capital Allowance	\$ 7,021

Return on Value. The opportunity costs (before holding gain) developed by MNN is \$37,113, obtained by multiplying its valuation of property (\$212,073) by 17.5%. FGI's figure is based on multiplying its value of property (\$43,373) by 17.5%. We have recomputed the opportunity cost (before holding gain) to be \$37,534 based on a revised valuation of property of \$212,054 (consisting of \$283,000 NLV, \$77,967 income tax consequences, and \$7,021 working capital) and a 17.7% rate of return.

Holding Gain. MNN computes a holding gain of \$2,912, by multiplying its NLV (\$283,000) by a GDP deflator of 1.029%. Similarly, FGI computes a holding gain of \$453 by multiplying its NLV (\$44,000) by 1.029%. Both of these numbers are incorrect. The latest GDP deflator (for 1996) on a pre-tax basis is 3.1%. When multiplied by our restated NLV (\$283,000), this produces a holding gain of \$8,773.

Total Return on Value. As restated, the total return on value equals \$28,761, calculated by subtracting the holding gain of \$8,773 from the return on value of \$37,534.

Summary

As restated in the Appendix, we find that MNN will incur an avoidable loss from operations of \$39,593 in the forecast year and a total economic loss of \$68,354.

Exemption Criteria

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.

Based on our analysis of the evidence of record, we find that further detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Most importantly here, by permitting MNN to forgo operating this line at a substantial loss and to apply its assets more productively elsewhere on its rail 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.

Because the shippers appear to have adequate transportation alternatives that they are already using, we find that regulation is not necessary to protect shippers from an abuse of market power. Nevertheless, to ensure that the shippers are informed of our action, we will require MNN to serve a copy of this decision on each of them within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.<sup>17</sup>

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<sup>17</sup> We wish to emphasize, however, that the petition for exemption procedure for abandonment is primarily intended to be used to expedite decisions and minimize regulatory burdens in uncontested or noncontroversial proceedings. It should not be used in proceedings where detailed analysis of revenues and costs is necessary. Detailed cost and revenue analysis is generally reserved for the application process, which provides for a recordbuilding process and for Board analysis by requiring work papers and other information needed to make an informed decision. Here, MNN was aware of opposition by FGI and was even aware of the shipper's argument that the Line would be profitable at 300 carloads. In order to defend its presentation, MNN has provided detailed revenue and cost evidence. This is not a case where clearly the revenue from the shipper's traffic is minimal compared to the cost of operating the line. See Boston and Maine Corporation--Abandonment Exemption--In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 75X), et al., (STB served Dec. 31, 1996), slip op. at 5-6. Rather, a detailed analysis of revenue and cost evidence is required to determine the profit/loss of the Line. Because of the shipper opposition and the need to analyze detailed revenue and cost evidence, MNN should more properly  
(continued...)

Labor Protection

Under 49 U.S.C. 10502(g), 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.

Environmental Issues

MNN 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 abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effect of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 2, 1997, which noted that the Minnesota Department of Natural Resources (MDNR) advises that a general construction storm water permit would be required for track removal. Therefore, SEA has recommended that a condition be imposed prohibiting the railroad from salvaging or disposing of the right-of-way until MNN obtains a general construction storm water permit from the MDNR. We agree and will impose the recommended condition.

FEAM submitted comments on September 24, 1997, raising, among other things, environmental issues. FEAM states that the Environmental Report filed by MNN as part of its petition contains inaccuracies, specifically, that applicant has underestimated the amount and impact of truck traffic that would result from the proposed abandonment. FEAM makes no mention of the Board's EA, which was not available to the public on September 29, 1997. No other comments relevant to the EA were received.

FEAM asserts that although "grain moved on this line will be trucked to nearby rail stations and transloaded, the bulk of the 250-300 cars that have and could continue to move over this line will end up being trucked long distances to market, adding up to 1,200 trucks on the road." This additional truck traffic, according to FEAM, would increase air emissions, noise, and safety impacts.

The Board's environmental rules at 49 CFR 1105.7(e)(4)(iv) provide that "if the proposed action will cause diversions from rail to motor carriage of more than (A) 1,000 carloads a year or

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<sup>17</sup>(...continued)

have filed an abandonment application. While we have processed this proposal as an exemption in order to allow the proposed abandonment to proceed in a timely fashion, we will not hesitate in the future to deny a petition for abandonment exemption should we find for these reasons that it ought to have been filed under 49 U.S.C. 10903 as an abandonment application.

(B) an average of 50 rail carloads per mile per year for any part of the affected line, [an applicant must] quantify the resulting net change in energy consumption and show the date and methodology used to arrive at the figure given.” In addition, 49 CFR 1105.7(e)(5) (C) provides that “if the proposed action will result in an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, [an applicant must] quantify the anticipated effect on air emissions.” In response to this section, MNN has certified in its environmental report that these thresholds will not be met or exceeded if the Board grants the proposed abandonment.

MNN states in its environmental report at page 2 that:

No passenger traffic will be diverted to other modes as a result of the proposed abandonment. Although 96 cars have moved on the Line since it was acquired by MNN and operations started on December 28, 1996 to June 26, 1997, the shippers on the Line in 1995 when it was owned by BN shipped 237 cars. It is anticipated that these cars will continue to move by rail. They will be trucked to alternative rail stations and transloaded. Alternative rail stations near Fertile on MNN are its nearly parallel branch from Tilden Jct., MN to Ada, MN (about 12 miles from Fertile) and its branch from Tilden Jct., MN to Strata, MN (about 10 miles from Fertile).

Moreover, MNN states in its environmental report that none of the Board’s environmental thresholds will be exceeded.

In preparing the EA, SEA has relied on the rail traffic figures set forth in MNN’s environmental report. MNN has provided verification that the information contained in its petition is true and accurate. FEAM does not provide any compelling reasons why MNN’s data are incorrect. Because the diversion figures in MNN’s environmental report are below the Board’s thresholds, SEA has acted properly in not performing a closer analysis of noise, air quality, and safety impacts. Based on SEA’s recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or conservation of energy resources.

#### Public Use

SEA indicates in its EA that the right-of-way may be suitable for public use after abandonment. MNDOT seeks 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 and transmission uses. It requests a 180-day public use period to allow the necessary time to study alternative transportation usages, to obtain right-of-way appraisals, and to negotiate with the railroad. MNDOT has 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-public use condition will be imposed.

Request for Expedition

MNN requests that the exemption be made effective by November 17, 1997, to enable it to salvage the Line prior to the onset of winter. To accommodate MNN's request, we will make the exemption effective in 15 days, rather than the customary 30 days.

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 MNN of the above-described 20.6-mile rail line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) the condition that MNN obtain a general construction storm water permit from the MDNR prior to salvaging or disposing of the right-of way; and (3) the condition that MNN leave intact all of the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels (but not 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 any other interested person to negotiate the acquisition of the Line for public use.

2. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)<sup>18</sup> to allow rail service to continue must be received by the railroad and the Board by November 24, 1997, 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 \$900 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. MNN is directed to serve a copy of this decision on FGI, Coop, Dale, and Tom Walski within 5 days after service of this decision and to certify to us that it has done so.

5. Provided no OFA has been received, this exemption will be effective on November 29, 1997. Petitions to stay must be filed by November 24, 1997. Petitions to reopen must be filed by December 9, 1997.

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<sup>18</sup> 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).

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6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), MNN 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 MNN's filing of a notice of consummation by November 16, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any 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 and Vice Chairman Owen.

Vernon A. Williams  
Secretary

APPENDIX  
Computation of Revenue Attributable to the Line, Avoidable Costs, and  
Reasonable Return on the Value of the Line to Be Abandoned

	MNN's Base Year Actual	MNN's Forecast Year	FGI's Forecast Year	STB's Restated Forecast Year
1. Freight Orig. and/or Term. on Branch	\$95,580	\$135,000	\$162,000	\$135,000
2. Bridge Traffic	0	0	0	0
3. All Other Revenue and Income	120	120	120	120
<b>4. Total Attributable Revenue (Ls. 1 thru 3)</b>	<b>\$95,700</b>	<b>\$135,120</b>	<b>\$162,120</b>	<b>\$135,120</b>
<b>5. On-branch Costs:</b>				
a. Maintenance-of-Way and Structures	\$103,821	\$105,386	\$78,396	\$100,198
b. Maintenance-of-Equipment (Including Depreciation)	3,726	3,088	2,435	3,088
c. Transportation	26,313	21,752	14,802	21,752
d. General & Administrative	0	0	0	0
e. Deadheading, Taxi and Hotel	0	0	0	0
f. Overhead Movement	0	0	0	0
g. Freight Car Costs (Other Than Return)	29,147	41,168	49,401	41,168
h. Return on Value - Locomotives	3,861	3,105	2,449	3,142
i. Return on Value - Freight Cars	0	0	0	0
j. Revenue Taxes	0	0	0	0
k. Property Taxes	5,800	5,800	5,800	5,800
<b>l. Total (Ls. 5a thru 5k)</b>	<b>\$172,668</b>	<b>\$180,299</b>	<b>\$153,283</b>	<b>\$175,148</b>
m. Holding Gains - Locomotives	0	0	0	435
n. Holding Gains (Loss) - Freight Cars	0	0	0	0
<b>o. Net On-br Costs (Ls. 5l - 5m &amp; 5n)</b>	<b>\$172,668</b>	<b>\$180,299</b>	<b>\$153,283</b>	<b>\$174,713</b>
<b>6. Off-branch Costs:</b>				
a. Off-Branch Costs (Other Than Return)	\$0	\$0	\$0	\$0
b. Return on Value - Freight Cars	0	0	0	0
c. Holding Gains - Freight Cars	0	0	0	0
<b>d. Net Off-br Costs (Ls. 6a+6b - 6c)</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>7. Total Avoidable Costs (L. 5o + L. 6d)</b>	<b>\$172,668</b>	<b>\$180,299</b>	<b>\$153,283</b>	<b>\$174,713</b>
8. Rehabilitation	\$0	\$667,419	\$0	\$0
9. Administrative Costs (Subsidy Year Only)	0	1,350	1,621	0
10. Casualty Reserve Account	0	0	0	0
<b>11. Total Subsidization Cost (Ls. 8 thru 10)</b>	<b>\$0</b>	<b>\$668,769</b>	<b>\$1,621</b>	<b>\$0</b>
12. Valuation of Road Properties				
a. Working Capital	\$0	\$7,040	\$7,040	\$7,021
b. Income Tax Consequences	0	(77,967)	(7,667)	(77,967)
c. Net Liquidation Value	0	283,000	44,000	283,000
<b>d. Total (Ls. 12a thru 12c)</b>	<b>\$0</b>	<b>\$212,073</b>	<b>\$43,373</b>	<b>\$212,054</b>
13. Nominal Rate of Return	0.0%	17.5%	17.5%	17.7%
14. Nominal Return on Value (L. 12d x L. 13)	\$0	\$37,113	\$7,590	\$37,534
15. Holding Gain (Loss)	\$0	\$2,912	\$453	\$8,773
<b>16. Total Return on Value (L. 14 - L. 15)</b>	<b>\$0</b>	<b>\$34,201</b>	<b>\$7,138</b>	<b>\$28,761</b>
<b>17. Avoidable (Loss) or Profit from Operations (L. 4 - L. 7)</b>	<b>(\$76,968)</b>	<b>(\$45,179)</b>	<b>\$8,837</b>	<b>(\$39,593)</b>
<b>18. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&amp;16)</b>	<b>(\$76,968)</b>	<b>(\$79,380)</b>	<b>\$1,699</b>	<b>(\$68,354)</b>
<b>19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, &amp; 16)</b>	<b>(\$76,968)</b>	<b>(\$748,149)</b>	<b>\$78</b>	<b>(\$68,354)</b>

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