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SERVICE DATE – FEBRUARY 4, 2014

## SURFACE TRANSPORTATION BOARD

### DECISION

Docket No. AB 497 (Sub-No. 6X)

#### MINNESOTA NORTHERN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN POLK COUNTY, MINN.

Digest:<sup>1</sup> This decision allows Minnesota Northern Railroad, Inc. to end its common carrier obligation to provide freight rail service over a 2.8-mile portion of a line of railroad in Polk County, Minn.

Decided: February 3, 2014

By petition filed on October 18, 2013, 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 2.8-mile portion of its Ada Subdivision between milepost 66.8 north of Beltrami and milepost 64.0 at the end of the track at or near Beltrami, in Polk County, Minn. (the Line). Notice of the exemption was served and published in the Federal Register on November 7, 2013 (78 Fed. Reg. 66,988). The Board will grant the exemption subject to standard employee protective conditions.

### BACKGROUND

According to MNN, the 2.8-mile line proposed for abandonment is a portion of its Ada Subdivision that was previously acquired, among other rail lines, from a predecessor of BNSF Railway Company (BNSF). MNN states that, if the proposed abandonment is approved, it intends to sell the Line to West Central Ag Services (WCAS), the sole shipper on the Line, for use as private industry track. MNN points out that WCAS has made improvements to its grain elevator located at Beltrami that will enable the origination of 100-car shuttle trains of grain. According to MNN, WCAS seeks to acquire additional private track space to accommodate WCAS's loading, switching, and staging of railcars for origination of its shuttle trains. Pursuant to a private industry track agreement between MNN and WCAS, MNN would operate over the private industry track. MNN would also continue to provide common carrier rail service over the remaining 14.2-mile portion of the Ada Subdivision between Beltrami and Crookston, at which point it would interchange shuttle trains to BNSF for long haul transportation.

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<sup>1</sup> 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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned 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 transportation policy (RTP) 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 of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP here. WSAC, the Line's only shipper, does not oppose the abandonment and, in fact, WSAC intends to acquire the track after the abandonment to accommodate the origination of its shuttle trains. By minimizing the administrative expense of the application process, an exemption in this case would minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). Moreover, by abandoning the Line, MNN would accommodate the transportation needs of the sole shipper on the Line. Thus, an exemption would also help to ensure the development and continuation of a sound rail transportation system, foster sound economic conditions in transportation, and promote efficient railroad management, consistent with 49 U.S.C. §§ 10101(4), (5), and (9). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

We also find that regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power.<sup>2</sup> As explained earlier, the only shipper on the Line, WSAC, does not oppose the proposed abandonment. Nevertheless, to ensure that WSAC is informed of our action, we will require MNN to serve a copy of this decision on WSAC so that it is received by the shipper within five days of its service date and to certify contemporaneously to the Board that it has done so.

Employee protection. 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, we will impose on MNN the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979) (Oregon Short Line).

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<sup>2</sup> Because we find that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed abandonment is limited in scope.

Environmental review. MNN has submitted a combined environmental and historic report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. § 1105.11. The Board's Office of Environmental Analysis (OEA) has examined the reports, verified the data they contain, and analyzed the probable effects of the proposed action on the quality of the human environment.

In an Environmental Assessment (EA) issued in this proceeding on December 17, 2013, OEA concluded that, as proposed, the abandonment of the Line would not significantly affect the quality of the human environment and recommended that no environmental conditions be imposed on any decision granting abandonment authority.

Comments to the EA were due by January 15, 2014. No comments to the EA were filed. Accordingly, based on OEA's recommendation, we conclude that the proposed abandonment, if implemented, would not significantly affect the quality of the human environment or the conservation of energy resources.

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 line, subject to the employee protective conditions set forth in Oregon Short Line.

2. MNN is directed to serve a copy of this decision on WCAS so that it is received within five days of this decision's service date and to certify contemporaneously to the Board that it has done so.

3. An Offer of Financial Assistance (OFA) under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by February 14, 2014, 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 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee of \$1,600. See 49 C.F.R. § 1002.2(f)(25).<sup>3</sup>

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<sup>3</sup> Consistent with our precedent, and given the apparent lack of need for the Line by any shipper other than WSAC, any person seeking to file an OFA must provide evidence that there is some shipper other than WSAC that would make use of common carrier service. See, e.g., CSX Transp.—Aban. Exemption—in Washington Cnty., Md., AB 55 (Sub-No. 727X) (STB served Oct. 24, 2013); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cnty., Iowa, AB 33 (Sub-No. 300X) (STB served Jan. 20, 2012); CSX Transp.—Aban. Exemption—in Chesterfield & Darlington Cntys, S.C., AB 55 (Sub-No. 703X) (STB served Jan. 19, 2011).

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 March 6, 2014.

6. Petitions to stay must be filed by February 19, 2014. Petitions to reopen must be filed by March 3, 2014.

7. Pursuant to the provisions of 49 C.F.R. § 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 February 4, 2015, 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 one-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Elliott and Vice Chairman Begeman.