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SERVICE DATE - APRIL 29, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-192 (Sub-No. 1)

THE BIRMINGHAM SOUTHERN RAILROAD COMPANY—  
ABANDONMENT AND DISCONTINUANCE OF TRackage RIGHTS—  
IN JEFFERSON COUNTY, AL

Decided: April 28, 1998

On January 9, 1998, the Birmingham Southern Railroad Company (BS) amended an application it filed on December 22, 1997, seeking to abandon a portion of its railroad line known as the Birmingham Branch, between BS milepost 146+97.22 and the end of the line, a distance of 3.869 miles, in Jefferson County, AL;<sup>1</sup> and to discontinue its trackage rights over Norfolk Southern Railway Company's (NSR) line between NSR's mileposts 143 and 144, a distance of .614 miles in Jefferson County, AL. The trackage rights include the right of BS to travel over approximately 500 feet of main line track over which NSR continues to maintain operations, and approximately 2,741 feet of yard track that was removed by NSR approximately 10 years ago. Notice of the filing of the application was served and published in the Federal Register (63 FR 4519) on January 29, 1998. The United Transportation Union filed comments seeking labor protection.

Upon review of the record, we conclude that the application should be granted, subject to standard employee protective conditions.

TRAFFIC, OPERATIONS, AND REVENUES

The only shipper served via the Birmingham Branch since 1982 is Mindis Metal Company (Mindis), a processor of scrap metal at a facility in Birmingham. Traffic for Mindis in 1995, 1996, and the first six months of 1997, amounted to 1,069, 650, and 365 carloads, respectively. During

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<sup>1</sup> BS amended its original filing to clarify that the portion of the Birmingham Branch sought to be abandoned consists of only two segments: (1) the Birmingham Running Track, extending a distance of 2.78 miles between BS station 0+00 and BS station 146+97.22; and (2) the Birmingham Yard, extending a distance of 1.08 miles between BS station 0+00 and BS station 56+83.94. BS maintains that a third segment originally included in its December 22, 1997 filing (the Ingalls Iron Works Track, extending a distance of .29 miles between BS station 3+20.28 and BS station 18+41.48) is actually exempt industry/switching track that should not have been included in the abandonment application. Accordingly, BS does not seek abandonment authorization for the Ingalls Iron Works Track.

the base year (July 1, 1996 - June 30, 1997), BS transported 641 carloads for Mindis, earning revenues of \$156,696 and incurring an avoidable loss from operations of \$28,813. No traffic was generated under the NSR trackage rights and there was no overhead or bridge traffic on the line during the base year.

BS states that the Birmingham Branch has a total of thirteen crossings, eight of which are located on 12th Street, an extremely high volume traffic area in the City of Birmingham. Twelve of the crossings are over public roads and one is over a private road. According to BS, the aging signal systems located on 12th Street need to be completely replaced. BS submits that, to upgrade the Birmingham Branch to comply with Federal Railroad Administration class 1 safety standards, it would need to install 6,800 cross ties and 588 switch ties, and replace the 12th Street road crossing protection systems, resulting in an estimated material expense of \$251,003 and an estimated labor and overhead expense of \$398,330.

#### SHIPPER AND COMMUNITY INTERESTS

Because of the rehabilitation costs needed to maintain the Birmingham Branch, the decreasing volume of traffic, and the lack of prospects for generating additional traffic, BS determined that it was no longer economically feasible to continue service to Mindis. As a result, BS, Mindis, and NSR, entered into an agreement dated February 14, 1997, to reroute the traffic. Under the agreement, NSR constructed a turnout to perform switching services for Mindis and BS constructed and installed approximately 528 feet of industry track from NSR's main line to connect Mindis' facility to the new turnout. Subsequently, with the consent of Mindis, BS discontinued its service on June 23, 1997, and NSR commenced its new service via the turnout and connecting track on July 1, 1997. NSR continues to provide this service.<sup>2</sup> Under the agreement, NSR will own and maintain the turnout; Mindis will own and maintain the connecting track.

According to BS, Ingalls Iron Works (Ingalls), a shipper with a facility served under the NSR trackage rights, terminated its operations and, as a result, the track has been out of service for approximately 25 years. BS submits that, subsequent to the termination of Ingalls' operations, NSR removed the majority of its yard track over which BS held trackage rights. Although CSX Transportation, Inc. (CSXT), used a short segment of BS' industry track for a number of years to provide switching services to Ingalls and an industry that subsequently moved into the facility, CSXT assertedly has removed all of its connecting tracks to the facility and has no continuing need to use BS' tracks for this purpose.

Thus, as a result of the changes discussed above, BS submits that all service on the Birmingham Branch and related NSR trackage rights has been discontinued. No protests or

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<sup>2</sup> As a result of the new construction, BS submits that it no longer has the ability to perform switching service on behalf of Mindis.

comments on behalf of shipper or community interests have been filed regarding the proposed abandonment and discontinuance of trackage rights.

#### ALTERNATIVE TRANSPORTATION

In addition to the February 14, 1997 agreement, BS and Mindis entered into an agreement on July 28, 1997, as amended, wherein BS agreed to lease land and track, including the connecting track, to Mindis to both facilitate NSR's switching services, and to enable CSXT to install a connection to Mindis' facility. Thus, in addition to the new service already implemented by NSR, Mindis will have a new alternative service available via CSXT.

#### DISCUSSION AND CONCLUSIONS

The statutory standard governing an abandonment or discontinuance of trackage rights is whether the present or future public convenience and necessity require or permit the proposed abandonment or discontinuance. 49 U.S.C. 10903(d). In implementing this standard, we must balance the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. Colorado v. United States, 271 U.S. 153 (1926). Essentially, the Board must determine whether the burden on the railroad from continued operation is outweighed by the burden on the shippers and public parties from the loss of rail service.

In this instance, there is no harm, real or potential, to shippers as the traffic of Mindis, the only shipper located on the Birmingham Branch, was rerouted with Mindis' agreement effective July 1, 1997. Because no comments or protests have been filed, it appears that this new shipping arrangement has proven satisfactory to Mindis. In addition, the evidence indicates that Mindis will also have a new alternative rail service available from CSXT. Discontinuance of the NSR trackage rights also does not harm any shipper or community interest. Indeed, the record shows that the Ingalls facility is no longer in operation and NSR has removed the majority of the involved yard track.

In contrast, the abandonment of the Birmingham Branch would allow BS to avoid the costs associated with maintaining this low-volume line that lacks prospects for generating additional traffic. Moreover, the community would benefit because abandonment of this short line segment would eliminate numerous road crossings on a heavily traveled street.

On balance, we conclude that the harm, if any, to shippers and the community from abandonment of the Birmingham Branch and discontinuance of service under the NSR trackage rights is outweighed by the demonstrated harm to BS and the burden on interstate commerce through continued operation of the line. We will, therefore, grant the application.

#### LABOR PROTECTION

In approving this application, we must ensure that affected rail employees will be adequately protected. 49 U.S.C. 10903(b)(2). We have found that the conditions imposed in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), satisfy the statutory requirements, and we will impose those conditions.

#### ENVIRONMENTAL ISSUES

The Board is also required to consider the environmental and energy impacts of the proposal. BS has submitted an environmental report with its application 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 effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on January 23, 1998, and requested comments by February 20, 1998. No comments have been filed.

In its EA, SEA examined the environmental impacts of the proposal. Areas of consideration included, but were not limited to, energy consumption, air and water quality, noise levels, endangered species, and public safety. SEA concluded that, based on the information provided from all sources, the proposal, if implemented, will not significantly affect the quality of the human environment. SEA also concluded that the right-of-way may be suitable for public use should the abandonment be authorized.

We agree with SEA's conclusions and will adopt them.

#### We find:

1. The present and future public convenience and necessity permit the abandonment and discontinuance of trackage rights over the above-described lines, subject to the employee protective conditions outlined in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).
2. Abandonment of the line and discontinuance of trackage rights will not have a serious, adverse impact on rural and community development.
3. The Birmingham Branch property may be suitable for other public purposes.

4. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application for abandonment and discontinuance of trackage rights over the above-described lines is granted subject to the employee protective conditions specified above.

2. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by BS and the Board by May 8, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). Each OFA must be accompanied by the \$1,000 filing fee. See 49 CFR 1002.2(f)(25). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1).

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 decision will be effective May 29, 1998. Petitions to stay must be filed by May 11, 1998, and petitions to reopen must be filed by May 19, 1998.

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), BS must 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 BS' filing a notice of consummation by April 29, 1999, 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