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SERVICE DATE - JUNE 26, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-57 (Sub-No. 40X)

SOO LINE RAILROAD COMPANY, D/B/A CANADIAN PACIFIC RAILWAY--  
ABANDONMENT EXEMPTION--IN HENNEPIN COUNTY, MN

Decided: June 23, 1998

By petition filed March 10, 1998,<sup>1</sup> Soo Line Railroad Company, doing business as Canadian Pacific Railway (CPR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1-mile line of railroad known as the Hiawatha/Cedar Avenue Wye, extending from milepost 423.59±, near the eastern edge of Cedar Avenue to the end of a wye at mileposts 423.26± and 423.21±, respectively, near the eastern edge of Hiawatha Avenue (State Highway 55), in Hennepin County, MN. The United Transportation Union seeks imposition of labor protective conditions. In addition, on April 17, 1998, Twin Cities & Western Railroad (TCW) filed comments requesting that any exemption granted contain certain conditions with respect to its trackage rights over the line. On June 18, 1998, Rahr Malting Co., the owner of the Cepro Elevator (Cepro) facility located adjacent to the line proposed for abandonment in this proceeding, filed a statement in opposition to the proposed abandonment. We will grant the exemption, subject to environmental and standard employee protective conditions and the condition that CPR may discontinue service but cannot consummate the abandonment of the line until after TCW obtains our approval or an exemption to discontinue its trackage rights.

BACKGROUND

CPR currently operates over a continuous route extending from the western boundary of Minneapolis, to St. Paul, MN, over a line known as the 29th Street Corridor. Pursuant to a Purchase Agreement dated December 23, 1992, the Hennepin County Regional Railroad Authority (HCRRA) owns the 29th Street Corridor and CPR and TCW operate over it by virtue of a grant-back easement for continued rail operations. Included in the agreement is the condition that CPR will ultimately relocate those operations currently moving through the wye trackage to enable the Minnesota Department of Transportation to rehabilitate and upgrade Highway 55 and avoid restoration of two railroad crossings over a main highway artery to and from downtown Minneapolis.

HCRRA also owns the former Chicago and North Western Transportation Company (CNW) line between Hopkins, MN, and Cedar Lake/Minneapolis, MN, which is known as the

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on March 30, 1998 (63 FR 15258).

Kenilworth Route. CPR and TCW have existing trackage rights over the Kenilworth Route and HCRRA is in the process of rehabilitating the track to permit CPR and TCW to relocate their overhead operations. Upon completion of the rehabilitation, but not later than July 1, 1998, CPR and TCW plan to relocate their respective overhead operations using the Kenilworth Route and their existing trackage rights over a line of The Burlington Northern and Santa Fe Railroad Company (BNSF), between Minneapolis and St. Paul.<sup>2</sup> According to CPR, no local shippers will be affected by the proposed abandonment or the relocation of operations, because Cepro, the only customer adjacent to the line, has been assured that service will continue after that portion of the line serving its facility is removed from service. Cepro, through its owner's June 18, 1998 filing, expresses dissatisfaction with the plan to reroute its traffic 5 miles west and 6 miles northeast instead of going directly to the east. Cepro is concerned about the circuitry, the potential increased costs to it, and the fact that several yard moves would evidently be necessary as part of the rerouting.

As part of the purchase of its lines from CPR in 1991, TCW was granted incidental trackage rights over the Merriam Park Line, extending from the eastern terminus of TCW's line at Tower E-14 near Hopkins (milepost 435.06) to milepost 416.43, and operating rights beyond to the St. Paul Yard, where it interchanges with CPR pursuant to an interchange agreement. The portion of the Hiawatha/Cedar Avenue Wye from milepost 423.59 to milepost 421.21 forms a part of the Merriam Park Line.<sup>3</sup> While TCW acknowledges that its trackage rights agreement with CPR, dated July 26, 1991, contemplated that CPR would sell to HCRRA a substantial portion of the Merriam Park Line, there is a stipulation in the agreement that if operations over the Merriam Park Line are interrupted, CPR will provide an alternate route through the Twin Cities Terminal over the Kenilworth Route. From Cedar Lake Junction, TCW could access its trackage rights over BNSF's line to the St. Paul Yard.

CNW discontinued operations over the Kenilworth Route in 1994, and it is now out-of-service and in disrepair.<sup>4</sup> TCW has reservations concerning the timing of the rehabilitation of the Kenilworth Route. It argues that a delay in the rehabilitation of the Kenilworth Route will have little effect on CPR because it has extremely limited operations over the Merriam Park Line and has an alternate route for its traffic. In contrast, TCW states that it handles approximately 15,000 carloads per year (85 percent of its traffic) over the Merriam Park Line, and currently has no other route to or from the St. Paul Yard. Thus, TCW asserts that abandonment of the Hiawatha/Cedar Avenue Wye should not be permitted until the Kenilworth Route is fully operational. TCW also argues that, after rehabilitation of the Kenilworth Route, the issue of responsibility for maintenance

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<sup>2</sup> A notice of exemption for relocation of overhead operations will be submitted pursuant to 49 CFR 1180.2(d)(5).

<sup>3</sup> The Merriam Park Line appears to be the same as the 29th Street Corridor.

<sup>4</sup> Among other things, the trestle bridge over the canal between Cedar Lake Junction and Lake of the Isles needs approximately \$500,000 of rehabilitation, according to TCW.

and dispatch must be resolved before the Kenilworth Route is a viable alternate route for TCW. TCW states that HCRRA has indicated in the past that it is not in a position to maintain or dispatch the line. Accordingly, TCW requests that any grant of the abandonment exemption be conditioned upon: (1) restoration of the Kenilworth Route to Federal Railroad Administration Class 1 condition and confirmation that all bridges on that line are safe for railroad operations; and (2) written acknowledgment to the Board by one or more financially responsible parties that they will maintain and dispatch the Kenilworth Route.<sup>5</sup>

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our 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.

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 CPR from the cost of maintaining the line, and allow its assets to be used more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

While Cepro's traffic would face some circuitry, Cepro has not shown that the proposed shift in the traffic movement would have a significant effect on it. Because Cepro will have continued service to meet its transportation needs, we conclude that regulation of the transaction is not necessary to protect shippers from an abuse of market power.<sup>6</sup> To ensure that the shipper is informed of our action, we will require CPR to serve a copy of this decision on Cepro within 5 days of the service date of this decision and certify to us that it has done so.

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<sup>5</sup> On May 19, 1998, HCRRA filed a letter stating that it has addressed the problems raised in TCW's requested conditions. However, by letter filed May 27, 1998, TCW states that HCRRA's letter does not allay its fears and still seeks inclusion of the requested conditions. Because, as we discuss below, any abandonment authority which we authorize here cannot be consummated until discontinuance authority regarding TCW's trackage rights is sought and granted or exempted, we need not discuss any further the merits of these conditions.

<sup>6</sup> Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Regarding TCW's trackage rights, CPR shall not consummate the abandonment until TCW obtains discontinuance authority or an exemption and interested persons are given an opportunity to seek imposition of trail use and public use conditions. See Missouri Pac. R. Co. - Aban. - Osage, Lyon & Morris Count., KS, (Missouri Pacific), 9 I.C.C.2d 1228 (1993).<sup>7</sup> Should anyone request a notice of interim trail use (NITU) or a public use condition in response to our action here, they must serve a copy on CPR and CPR is responsible for informing them if and when TCW's trackage rights are discontinued. Persons making such requests may renew their requests upon being advised by CPR that the trackage rights are about to be discontinued. Until that time, we will not act upon any request for a public use condition or NITU.

Under 49 U.S.C. 10502(g), we may not use our 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 the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

CPR 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. Our 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, and served an environmental assessment (EA) on May 14, 1998. In the EA, SEA indicated that the U.S. Environmental Protection Agency, the Minnesota Pollution Control Agency and the Hennepin County Administrator have expressed concerns that salvaged materials be properly disposed of and that contaminants, if any are present, be removed from the right-of-way. Therefore, SEA recommends that a condition be imposed requiring CPR to remove all salvaged materials and contaminants from the right-of-way and dispose of unuseable materials and contaminants in accordance with state and local regulations.

No comments to the EA were filed by the June 8, 1998 due date. Based on SEA's recommendations, we conclude that the proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the line's abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none can be imposed at this time.

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<sup>7</sup> As explained in Missouri Pacific, the issue of trail use and public use cannot be considered at this time because TCW has not relinquished its trackage rights.

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: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) the condition that CPR may discontinue service but cannot consummate the abandonment of the line until after: (a) TCW obtains approval or an exemption to discontinue its trackage rights; and (b) CPR informs any party requesting a public use condition or a NITU, in response to this decision, if and when those trackage rights are discontinued; and (3) the condition that upon consummation of the abandonment, CPR shall remove all salvaged materials and contaminants from the right-of-way and dispose of unuseable materials and contaminants in accordance with state and local regulations.

2. CPR must serve a copy of this decision on Cepro Elevator within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by July 6, 1998, 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 \$1,000 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 July 26, 1998. Petitions to stay must be filed by July 13, 1998, and petitions to reopen must be filed by July 21, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary