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SERVICE DATE - SEPTEMBER 1, 1998

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33646]

Twin Cities & Western Railroad Co.--Relocation Exemption--Hennepin County Regional Railroad Authority and The Burlington Northern and Santa Fe Railway Company

On August 3, 1998, Twin Cities & Western Railroad Co. (TCW), filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate certain overhead trackage rights in Hennepin County, MN. The transaction was expected to be consummated on or after August 10, 1998.

In 1991, as part of the purchase of its lines from Soo Line Railroad Company, doing business as Canadian Pacific Railway (CPR), 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, MN (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 Merriam Park Line was purchased by the Hennepin County Regional Railroad Authority (HCRRA) pursuant to a Purchase Agreement dated December 23, 1992. As part of the Purchase Agreement, CPR and TCW were given a grant-back easement on the Merriam Park Line for continued rail operations.

The Merriam Park Line includes a portion of the Hiawatha/Cedar Avenue Wye, from milepost 423.59±, near the eastern edge of Cedar Avenue, to milepost 421.21±, near the eastern edge of Hiawatha Avenue (State Highway 55); the remainder of the wye is from

milepost 423.59± to milepost 423.26±. Included in the Purchase Agreement is the condition that CPR will ultimately relocate those operations currently moving through the wye track 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. In Soo Line Railroad Company, d/b/a Canadian Pacific Railway--Abandonment Exemption--In Hennepin County, MN, STB Docket No. AB-57 (Sub-No. 40X) (STB served June 26, 1998), CPR was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over but not abandon the 1-mile wye until after TCW obtains approval or an exemption to discontinue its trackage rights and CPR informs any party requesting a public use condition or a NITU if and when those trackage rights are discontinued.

In TCW's Trackage Rights Agreement with CPR, dated July 26, 1991, there is a stipulation that if operations over the Merriam Park Line are interrupted, CPR will provide an alternate route over the Kenilworth Route, which is a line that extends between Hopkins and Cedar Lake/Minneapolis, MN. The Kenilworth Route is also owned by the HCRRA. CPR and TCW have existing trackage rights over the Kenilworth Route, which had been out-of-service and in disrepair. HCRRA has rehabilitated the Kenilworth Route and by this notice of exemption, CPR and TCW are relocating their overhead operations using the Kenilworth Route and their existing trackage rights over a line of The Burlington Northern and Santa Fe Railroad Company, between Minneapolis and St. Paul, MN, to reach the St. Paul Yard.

Incidental to the relocation, TCW is also discontinuing its trackage rights over the portion of the Merriam Park Line extending from milepost 428.0 to milepost 416.43. The transaction will simplify rail operations. TCW states that, because it operates only overhead trackage rights over the Merriam Park Line, no shippers will be affected by the relocation, and, thus, separate approval or an exemption is not required for the discontinuance of trackage rights.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. See City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208 (1993), aff'd sub nom., Detroit/Wayne County Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. See D.T.&I.R.--Trackage Rights, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring STB Finance Docket No. 33646, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Ave., N.W., Suite 800, Washington, DC 20005-4797.

Board decisions and notices are available on our website at “[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: August 25, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary