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SERVICE DATE - OCTOBER 9, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-57 (Sub-No. 52X)

SOO LINE RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN HENNEPIN  
COUNTY, MN

Decided: October 5, 2001

By petition filed on June 21, 2001,<sup>1</sup> Soo Line Railroad Company, doing business as Canadian Pacific Railway (the Soo Line or the Soo), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 4.7+/- mile line of railroad, the 29th Street Corridor, also known as the “Depression Line,” between milepost 428.3+/- (TC&W switch turnout west of France Avenue) and milepost 423.6+/- (near the eastern edge of Cedar Avenue), in Minneapolis, Hennepin County, MN. The Hennepin County Regional Railroad Authority (the Authority), a political subdivision of the State of Minnesota, requests issuance of a public use condition. We will grant the exemption, subject to public use, environmental, and standard employee protective conditions.

BACKGROUND

The Soo Line states that the involved trackage was originally constructed in the 1880s by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, predecessor to the Soo. The line was reconstructed in 1913-16 pursuant to a 1910 City of Minneapolis ordinance requiring that it be built below grade. Hence it became known as the Depression Line. Historically, the line has been used for freight and passenger trains. Land use in the areas around the trackage have included grain elevators, residential use, and commercial districts. Commercial activity in this part of urban Minneapolis continues, but the need for rail service by the businesses and industries in the area has disappeared. The land along most of the Depression Line Corridor is owned by the Authority, which purchased it from the Soo Line in 1992. The Soo operates the line of railroad under the terms of an easement that was granted as a condition of that sale. Currently, the Soo Line pays an easement fee to the Authority of \$44,000 annually.

The Soo Line is seeking abandonment of the subject line because the trackage is no longer viable. There is no overhead traffic on the line, and CEPRO Elevator (CEPRO), the only

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on July 9, 2001 (66 FR 35827-28).

remaining shipper on the line, ceased operations in June 2001.<sup>2</sup> Petitioner states that it has no income from the line, but that it still pays easement fees and must continue to do so until abandonment authority has been obtained and the track has been removed from the corridor. According to the Soo Line, the cessation of business by the sole remaining shipper and ongoing easement costs demonstrate that the costs the Soo incurs for the line greatly exceed the revenues (currently none) attributable to it, both now and in the future.

According to the Soo, all but four-tenths of a mile of the corridor is owned by the Authority. After abandonment, the Authority plans to take possession of the corridor as soon as possible to begin work on extending a trail on a portion of the line, and the Soo Line will reuse the rail on other parts of its system.

### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board 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 the Soo Line of the cost of owning, maintaining, and operating the line and allow it to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. There is no overhead traffic and the sole shipper on the line, CEPRO, has ceased operations, no longer requires rail service, and does not oppose the abandonment. Nevertheless, to ensure that CEPRO is informed of our decision, we will direct the Soo Line to serve a copy of this decision on the shipper within 5 days of the decision's service date, and to 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.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of

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<sup>2</sup> CEPRO is owned by Rahr Malting Company (Rahr) of Shakopee, MN. On April 16, 2001, Rahr notified Soo Line that it would be curtailing all activities at CEPRO's facility and that it would be permanently closing the facility. Rahr further advised that there would be no need for rail service after June 15, 2001.

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).

The Soo Line 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 the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on August 10, 2001. In the EA, SEA noted that the Minnesota State Historic Preservation Officer has not yet completed review of the proposed abandonment. SEA also noted that the National Geodetic Survey (NGS) has identified three geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommended that the following conditions be imposed on any decision granting abandonment authority: (1) that the Soo Line retain its interest in the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); and (2) that the Soo Line notify NGS 90 days prior to any salvage activities in order to plan for the relocation of any geodetic station markers that may be affected by the proposed abandonment.

No comments to the EA were filed by the September 10, 2001 due date. We will impose the conditions recommended by SEA. Accordingly, based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in the EA that the right-of-way may be suitable for other public use following abandonment. By letter filed on July 30, 2001, the Authority requests imposition of a 180-day public use condition under 49 U.S.C. 10905 for a portion of the right-of-way between milepost 427.9 and milepost 428.3.<sup>3</sup> The Authority requests an order: (1) prohibiting the Soo Line from disposing of the segment except for public use on reasonable terms; and (2) barring the Soo Line from removing or destroying corridor structures such as bridges, trestles, culverts and tunnels, but allowing disposal of tracks, ties and signal equipment. The Authority states that it plans to use the segment for future transportation including, without limitation, light rail transit, bus, vintage trolley, and bicycle.

The Authority has met the criteria for imposing a public use condition, as set forth at 49 CFR 1152.28(a)(2), by specifying: (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 the period of time requested. Accordingly, a 180-day public use condition will be imposed.

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<sup>3</sup> Both the Soo Line and the Authority request that the portion of the line that would be subject to the public use condition be bifurcated from the remainder of the line, which is already owned by the Authority. This second segment is the only portion of the line owned by Soo Line.

We note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes. Therefore, Soo Line is not required to deal exclusively with the Authority, but may engage in negotiations with other interested persons.

The parties should note that the operation of the public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986), offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the public use process may proceed.

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 the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and the conditions that the Soo Line shall: (1) retain its interest in the line until completion of the section 106 process of the NHPA; (2) notify NGS 90 days prior to any salvage activities in order to plan for the relocation of any geodetic station markers that may be affected by the proposed abandonment; and (3) leave intact all of the right-of-way between mileposts 427.9 and 428.3, including bridges, trestles, culverts, and tunnels (but not track and 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 acquisition of the line for public use.

2. The Soo Line is directed to 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)<sup>4</sup> to allow rail service to continue must be received by the railroad and the Board by October 19, 2001, subject to the 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).

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<sup>4</sup> See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996), and 2 S.T.B. 311 (1997).

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 November 8, 2001. Petitions to stay must be filed by October 24, 2001, and petitions to reopen must be filed by November 5, 2001.

6. Pursuant to the provisions of 49 CFR 1152.29(c)(2), the Soo Line 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 the Soo Line’s filing of a notice of consummation by October 9, 2002, 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, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary