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SERVICE DATE - NOVEMBER 14, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-497 (Sub-No. 1X)

MINNESOTA NORTHERN RAILROAD, INC.--ABANDONMENT EXEMPTION--IN
RED LAKE AND POLK COUNTIES, MN

Decided: November 12, 1997

By petition filed July 29, 1997, 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 line of railroad known as the Red Lake Falls-Strata Line, extending from milepost 59.00 near Strata, MN, to milepost 69.14 near Red Lake Falls, MN, a distance of 10.14 miles, in Red Lake and Polk Counties, MN. Pursuant to 49 U.S.C. 10502(b), a notice was published in the Federal Register (62 FR 44031) on August 18, 1997, instituting an exemption proceeding. A request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed by Red Lake County (County). A request for imposition of a public use condition was also filed by the Minnesota Department of Transportation (MNDOT).¹ A comment in opposition to the petition was filed by the Farmers Elevator Association of Minnesota (Association). MNN filed a reply. We will grant the exemption subject to trail use, public use, environmental and standard employee protective conditions.

BACKGROUND

The Red Lake Falls-Strata Line is one of five rail lines that MNN acquired from the Burlington Northern Railroad Company (BN) on December 28, 1996.² MNN states that at the time

¹ The August 18 notice provided that any request for a public use condition under 49 CFR 1152.28 had to be filed no later than September 8, 1997. MNDOT's request was filed on September 11, 1997. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), we stated that we would retain our policy of accepting filings after the due date when good cause is shown. Because MNDOT's late-filed request has not delayed the proceeding, we will accept MNDOT's submission.

² See Minnesota Northern Railroad, Inc.--Exemption--Acquisition and Operation of Rail Line and Incidental Trackage Rights from Burlington Northern Railroad Company, STB Finance Docket No. 33315 (STB served Mar. 12, 1997). See also RailAmerica, Inc.--Continuance in Control Exemption--Minnesota Northern Railroad, Inc., STB Finance Docket No. 33316 (STB

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it acquired the line it expected to generate sufficient traffic to make the line profitable. However, after severe winter weather conditions, MNN embargoed the line from March 18, 1997, to May 16, 1997. According to MNN, no shipper on this line requested service from MNN either before or after the embargo.

Before the line was acquired by MNN, two customers, Red Lake Falls Elevator (RLFE) and Red Lake County Coop (RLCC), located at the end of the line in Red Lake Falls, used the line to ship barley, wheat, soybeans, sunflower seeds, and oats. In calendar year 1996 (the last full year of BN's operations), they shipped only 63 carloads. Since then, both RLFE and RLCC have used truck transportation exclusively. According to MNN, all former rail customers on the line were contacted in February and May 1997. Although RLFE advised that it expected to ship 50 carloads in 1997, and RLCC advised that it expected to receive up to 15 carloads of fertilizer in 1997, to date, no traffic has moved on the line nor has there been a demand for service.³

The line consists of 90-pound rail rolled in either 1886 or 1916. MNN states that the line is classified as Federal Railroad Administration (FRA) excepted track, with a maximum operating speed of 10 mph. For the forecast year (June 30, 1997, to July 1, 1998), MNN estimates rehabilitation costs of \$326,938 to bring the line up to minimum FRA Class 1 standards, and normalized maintenance expenses of \$61,196.⁴ It also projects 85 carloads of traffic and revenues of \$45,010. When MNN's total avoidable costs of \$111,449 are considered, the result is an avoidable loss from operations of \$66,439 in the forecast year. If opportunity costs are factored in, the loss from operations rises to \$83,242.

The Association, a voluntary non-profit trade association that consists of over 300 cooperative and independent country grain elevators in Minnesota, joins with the Polk and Red Lake County Boards⁵ and its member elevator, Brooks Farmers Co-op Association, in opposition to the abandonment. The Association requests a full review of the proposed abandonment. The Association alleges that MNN never intended to operate on the line and purchased it only for its

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served Mar. 12, 1997). As a result of the merger of the Atchison, Topeka and Santa Fe Railway Company into BN on December 31, 1996, BN is now The Burlington Northern and Santa Fe Railway Company. For purposes of this decision, we will continue to refer to this entity as BN.

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In reply, MNN denies that it acquired the line for the purpose of salvaging the track and materials. MNN points out that it has not filed for abandonment of its three line segments that generate over 90 percent of its carloads and represent about 86 percent of its trackage. MNN states that when it acquired the line it did not expect that the shippers on the line would cease using it. MNN states that it is abandoning this line despite its efforts to generate traffic because there is no demand for service.

In response to the Association's allegations that it failed to invest in the line, MNN points out that it began operations over its lines in December 1996 with one locomotive that has a snow plow. It acquired another locomotive with a snow plow in January 1997, and in February 1997, it acquired a locomotive with snow plows at both ends. MNN states that even with its snow plows and hired contractors with bulldozers, it had to decide which of its five lines to keep open. MNN states that, when it decided to embargo the Red Lake Falls-Strata Line, it made the decision to use its snow clearing resources on the rail lines where there was a demand for service and an opportunity for return on its investment in the snow plows and bulldozers. MNN also points out that its operating data are based on the provision of service once a week, not daily service.

DISCUSSION AND CONCLUSIONS

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

Based on the record, we conclude that MNN has satisfied the exemption criteria of 49 U.S.C. 10502. Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. There is no justification to warrant a more thorough review of the proposed abandonment under section 10903. The Association has not rebutted MNN's cost figures and has provided no factual support for its allegations. MNN's expectation that it would receive traffic from RLFE and RLCC has not been met, because these shippers have chosen to use motor carrier service for their shipments. It is evident that continued operation of the Red Lake Falls-Strata Line is a substantial drain on MNN and poses a threat to service on its remaining rail lines. By minimizing the administrative time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will promote a safe and efficient rail transportation system, foster sound economic conditions in transportation, and encourage efficient management by allowing MNN to avoid maintenance and rehabilitation costs on this unprofitable

line and enable it to apply its assets more productively to other rail lines in its system [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because the shippers on the line no longer use the line but instead rely on motor carrier transportation. Nevertheless, to ensure that the shippers are aware of our action, we will require MNN to serve a copy of this decision on them within 5 days of the service date of this decision 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 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).

MNN 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 October 2, 1997. In the EA, SEA indicated that the U.S. Fish and Wildlife Service field office located at Twin Cities, MN, suggests that a site survey be conducted to determine if any Western Prairie Fringed Orchids are located on a portion of the right-of-way designated as Southeast Section 26. SEA, therefore, recommends that any decision granting an abandonment exemption contain a condition prohibiting MNN from salvaging or disposing of the portion of the right-of-way designated as Southeast Section 26 until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531.

No comments to the EA were filed by the October 28, 1997 due date. We will impose the condition recommended by SEA. Based on SEA's recommendation, 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.

The County requests that interim trail use/rail banking be imposed under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. By letter dated October 31, 1997, MNN states that it is willing to negotiate with the County for interim trail use. The County's request complies with the requirements of 49 CFR 1152.29 and MNN is willing to enter into negotiations. Therefore, we will issue a NITU for the described line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, MNN may fully abandon the line, subject to the conditions imposed below. See 49

CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail 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) (Trails), 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 U.S.C. 1152.27(c)(1), the effective date of this decision and notice 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 trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

SEA has indicated in its EA that the right-of-way may be suitable for other public use after abandonment. As noted above, the County and MNDOT have requested that a 180-day public use condition be imposed. The County requests that MNN be precluded from:

(1) disposing of the rail corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts and tunnels. The County states that the corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. It also states that the corridor provides important wildlife habitat and green space and its preservation as a recreational trail is consistent with that end. The County indicates that the 180-day time period is needed to assemble title information, complete a trail plan, and commence negotiations with the carrier. MNDOT states that it is considering acquisition of the rail corridor for alternative transportation and transmission usages. It indicates that the 180-day time period would allow it to study alternative transportation usages, obtain right-of-way appraisals, and negotiate with the carrier.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The County and MNDOT have met the public use criteria prescribed 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 of the period of time requested. Accordingly, a 180-day public use condition also will be imposed, commencing with the effective date of this decision and notice. If a trail use agreement is reached on a portion of the right-of-way, MNN must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, 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, including trail use. Therefore, with respect to the public use condition, MNN is not required to deal

exclusively with the County and MNDOT, but may engage in negotiations with other interested persons.

MNN has requested expedited handling of this petition and requests that the exemption be made effective by November 17, 1997. MNN states that expedited handling is requested in order to give MNN sufficient time to salvage the line prior to the onset of winter. MNN states that it has incurred sizable costs while generating only minimal non-transportation revenue from this asset. In an effort to accommodate MNN's request, we will make the exemption effective in 15 days, rather than the customary 30 days.

It is ordered:

1. MNDOT's late-filed request for a public use condition under 49 U.S.C. 10905 is accepted.

2. 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 in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that: (1) MNN be prohibited from salvaging or disposing of the portion of the right-of-way designated as Southeast Section 26 until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531; (2) MNN shall leave intact all of the right-of-way, including bridges, trestles, culverts and tunnels (but not track or 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 the acquisition of the line for public use; and (3) MNN shall comply with the interim trail use/rail banking procedures set forth below.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, MNN may fully abandon the line, provided the conditions imposed above are met.

7. MNN is directed to serve a copy of this decision on the shippers on the line within 5 days after the service date of this decision and to certify to the Board that it has done so.

8. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 24, 1997, 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 the filing fee, which currently is set at \$900. See 49 CFR 1002.2(f)(25).

9. 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.”**

10. Provided no OFA has been received, this exemption will be effective November 29, 1997. Petitions to stay must be filed by November 24, 1997, and petitions to reopen must be filed by December 9, 1997.

11. Pursuant to the provisions of 49 CFR 1152.29(e)(2), MNN shall file 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 November 16, 1998, 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 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

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BACKGROUND

The Red Lake Falls-Strata Line is one of five rail lines that MNN acquired from the Burlington Northern Railroad Company (BN) on December 28, 1996.² MNN states that at the time

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We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The County and MNDOT have met the public use criteria prescribed 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 of the period of time requested. Accordingly, a 180-day public use condition also will be imposed, commencing with the effective date of this decision and notice. If a trail use agreement is reached on a portion of the right-of-way, MNN must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, 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, including trail use. Therefore, with respect to the public use condition, MNN is not required to deal

exclusively with the County and MNDOT, but may engage in negotiations with other interested persons.

MNN has requested expedited handling of this petition and requests that the exemption be made effective by November 17, 1997. MNN states that expedited handling is requested in order to give MNN sufficient time to salvage the line prior to the onset of winter. MNN states that it has incurred sizable costs while generating only minimal non-transportation revenue from this asset. In an effort to accommodate MNN's request, we will make the exemption effective in 15 days, rather than the customary 30 days.

It is ordered:

1. MNDOT's late-filed request for a public use condition under 49 U.S.C. 10905 is accepted.

2. 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 in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that: (1) MNN be prohibited from salvaging or disposing of the portion of the right-of-way designated as Southeast Section 26 until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531; (2) MNN shall leave intact all of the right-of-way, including bridges, trestles, culverts and tunnels (but not track or 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 the acquisition of the line for public use; and (3) MNN shall comply with the interim trail use/rail banking procedures set forth below.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, MNN may fully abandon the line, provided the conditions imposed above are met.

7. MNN is directed to serve a copy of this decision on the shippers on the line within 5 days after the service date of this decision and to certify to the Board that it has done so.

8. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 24, 1997, 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 the filing fee, which currently is set at \$900. See 49 CFR 1002.2(f)(25).

9. 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.”**

10. Provided no OFA has been received, this exemption will be effective November 29, 1997. Petitions to stay must be filed by November 24, 1997, and petitions to reopen must be filed by December 9, 1997.

11. Pursuant to the provisions of 49 CFR 1152.29(e)(2), MNN shall file 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 November 16, 1998, 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 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

28146
EB

SERVICE DATE - NOVEMBER 14, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-497 (Sub-No. 1X)

MINNESOTA NORTHERN RAILROAD, INC.--ABANDONMENT EXEMPTION--IN
RED LAKE AND POLK COUNTIES, MN

Decided: November 12, 1997

By petition filed July 29, 1997, 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 line of railroad known as the Red Lake Falls-Strata Line, extending from milepost 59.00 near Strata, MN, to milepost 69.14 near Red Lake Falls, MN, a distance of 10.14 miles, in Red Lake and Polk Counties, MN. Pursuant to 49 U.S.C. 10502(b), a notice was published in the Federal Register (62 FR 44031) on August 18, 1997, instituting an exemption proceeding. A request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed by Red Lake County (County). A request for imposition of a public use condition was also filed by the Minnesota Department of Transportation (MNDOT).¹ A comment in opposition to the petition was filed by the Farmers Elevator Association of Minnesota (Association). MNN filed a reply. We will grant the exemption subject to trail use, public use, environmental and standard employee protective conditions.

BACKGROUND

The Red Lake Falls-Strata Line is one of five rail lines that MNN acquired from the Burlington Northern Railroad Company (BN) on December 28, 1996.² MNN states that at the time

¹ The August 18 notice provided that any request for a public use condition under 49 CFR 1152.28 had to be filed no later than September 8, 1997. MNDOT's request was filed on September 11, 1997. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), we stated that we would retain our policy of accepting filings after the due date when good cause is shown. Because MNDOT's late-filed request has not delayed the proceeding, we will accept MNDOT's submission.

² See Minnesota Northern Railroad, Inc.--Exemption--Acquisition and Operation of Rail Line and Incidental Trackage Rights from Burlington Northern Railroad Company, STB Finance Docket No. 33315 (STB served Mar. 12, 1997). See also RailAmerica, Inc.--Continuance in Control Exemption--Minnesota Northern Railroad, Inc., STB Finance Docket No. 33316 (STB

(continued...)

it acquired the line it expected to generate sufficient traffic to make the line profitable. However, after severe winter weather conditions, MNN embargoed the line from March 18, 1997, to May 16, 1997. According to MNN, no shipper on this line requested service from MNN either before or after the embargo.

Before the line was acquired by MNN, two customers, Red Lake Falls Elevator (RLFE) and Red Lake County Coop (RLCC), located at the end of the line in Red Lake Falls, used the line to ship barley, wheat, soybeans, sunflower seeds, and oats. In calendar year 1996 (the last full year of BN's operations), they shipped only 63 carloads. Since then, both RLFE and RLCC have used truck transportation exclusively. According to MNN, all former rail customers on the line were contacted in February and May 1997. Although RLFE advised that it expected to ship 50 carloads in 1997, and RLCC advised that it expected to receive up to 15 carloads of fertilizer in 1997, to date, no traffic has moved on the line nor has there been a demand for service.³

The line consists of 90-pound rail rolled in either 1886 or 1916. MNN states that the line is classified as Federal Railroad Administration (FRA) excepted track, with a maximum operating speed of 10 mph. For the forecast year (June 30, 1997, to July 1, 1998), MNN estimates rehabilitation costs of \$326,938 to bring the line up to minimum FRA Class 1 standards, and normalized maintenance expenses of \$61,196.⁴ It also projects 85 carloads of traffic and revenues of \$45,010. When MNN's total avoidable costs of \$111,449 are considered, the result is an avoidable loss from operations of \$66,439 in the forecast year. If opportunity costs are factored in, the loss from operations rises to \$83,242.

The Association, a voluntary non-profit trade association that consists of over 300 cooperative and independent country grain elevators in Minnesota, joins with the Polk and Red Lake County Boards⁵ and its member elevator, Brooks Farmers Co-op Association, in opposition to the abandonment. The Association requests a full review of the proposed abandonment. The Association alleges that MNN never intended to operate on the line and purchased it only for its

²(...continued)

served Mar. 12, 1997). As a result of the merger of the Atchison, Topeka and Santa Fe Railway Company into BN on December 31, 1996, BN is now The Burlington Northern and Santa Fe Railway Company. For purposes of this decision, we will continue to refer to this entity as BN.

³ When RLCC was contacted in May 1997, it stated that it had received by truck the equivalent of 11 of the projected 15 in-bound carloads of fertilizer.

⁴ Normalized maintenance calculated to maintain the line at FRA Class 1 standards is \$59,025. The higher figure reflects the addition of depreciation.

⁵ Attached to the Association's letter filed on September 15, 1997, are copies of the Polk and Red Lake County's Resolutions in which they oppose the abandonment stating that abandonment of the line would cause a negative impact on the economy of Polk County.

salvage value. The Association points out that MNN is proposing to abandon the line shortly after acquiring it, that MNN embargoed the line for most of the winter, and that, essentially, MNN made little effort to provide service or pursue business along the line, not even investing in a snow plow. The Association also alleges that MNN's cost data are based on the provision of daily service rather than the weekly service formerly provided.

In reply, MNN denies that it acquired the line for the purpose of salvaging the track and materials. MNN points out that it has not filed for abandonment of its three line segments that generate over 90 percent of its carloads and represent about 86 percent of its trackage. MNN states that when it acquired the line it did not expect that the shippers on the line would cease using it. MNN states that it is abandoning this line despite its efforts to generate traffic because there is no demand for service.

In response to the Association's allegations that it failed to invest in the line, MNN points out that it began operations over its lines in December 1996 with one locomotive that has a snow plow. It acquired another locomotive with a snow plow in January 1997, and in February 1997, it acquired a locomotive with snow plows at both ends. MNN states that even with its snow plows and hired contractors with bulldozers, it had to decide which of its five lines to keep open. MNN states that, when it decided to embargo the Red Lake Falls-Strata Line, it made the decision to use its snow clearing resources on the rail lines where there was a demand for service and an opportunity for return on its investment in the snow plows and bulldozers. MNN also points out that its operating data are based on the provision of service once a week, not daily service.

DISCUSSION AND CONCLUSIONS

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

Based on the record, we conclude that MNN has satisfied the exemption criteria of 49 U.S.C. 10502. Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. There is no justification to warrant a more thorough review of the proposed abandonment under section 10903. The Association has not rebutted MNN's cost figures and has provided no factual support for its allegations. MNN's expectation that it would receive traffic from RLFE and RLCC has not been met, because these shippers have chosen to use motor carrier service for their shipments. It is evident that continued operation of the Red Lake Falls-Strata Line is a substantial drain on MNN and poses a threat to service on its remaining rail lines. By minimizing the administrative time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will promote a safe and efficient rail transportation system, foster sound economic conditions in transportation, and encourage efficient management by allowing MNN to avoid maintenance and rehabilitation costs on this unprofitable

line and enable it to apply its assets more productively to other rail lines in its system [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because the shippers on the line no longer use the line but instead rely on motor carrier transportation. Nevertheless, to ensure that the shippers are aware of our action, we will require MNN to serve a copy of this decision on them within 5 days of the service date of this decision 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 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).

MNN 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 October 2, 1997. In the EA, SEA indicated that the U.S. Fish and Wildlife Service field office located at Twin Cities, MN, suggests that a site survey be conducted to determine if any Western Prairie Fringed Orchids are located on a portion of the right-of-way designated as Southeast Section 26. SEA, therefore, recommends that any decision granting an abandonment exemption contain a condition prohibiting MNN from salvaging or disposing of the portion of the right-of-way designated as Southeast Section 26 until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531.

No comments to the EA were filed by the October 28, 1997 due date. We will impose the condition recommended by SEA. Based on SEA's recommendation, 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.

The County requests that interim trail use/rail banking be imposed under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. By letter dated October 31, 1997, MNN states that it is willing to negotiate with the County for interim trail use. The County's request complies with the requirements of 49 CFR 1152.29 and MNN is willing to enter into negotiations. Therefore, we will issue a NITU for the described line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, MNN may fully abandon the line, subject to the conditions imposed below. See 49

CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail 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) (Trails), 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 U.S.C. 1152.27(c)(1), the effective date of this decision and notice 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 trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

SEA has indicated in its EA that the right-of-way may be suitable for other public use after abandonment. As noted above, the County and MNDOT have requested that a 180-day public use condition be imposed. The County requests that MNN be precluded from:

(1) disposing of the rail corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts and tunnels. The County states that the corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. It also states that the corridor provides important wildlife habitat and green space and its preservation as a recreational trail is consistent with that end. The County indicates that the 180-day time period is needed to assemble title information, complete a trail plan, and commence negotiations with the carrier. MNDOT states that it is considering acquisition of the rail corridor for alternative transportation and transmission usages. It indicates that the 180-day time period would allow it to study alternative transportation usages, obtain right-of-way appraisals, and negotiate with the carrier.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The County and MNDOT have met the public use criteria prescribed 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 of the period of time requested. Accordingly, a 180-day public use condition also will be imposed, commencing with the effective date of this decision and notice. If a trail use agreement is reached on a portion of the right-of-way, MNN must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, 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, including trail use. Therefore, with respect to the public use condition, MNN is not required to deal

exclusively with the County and MNDOT, but may engage in negotiations with other interested persons.

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It is ordered:

1. MNDOT's late-filed request for a public use condition under 49 U.S.C. 10905 is accepted.

2. 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 in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that: (1) MNN be prohibited from salvaging or disposing of the portion of the right-of-way designated as Southeast Section 26 until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531; (2) MNN shall leave intact all of the right-of-way, including bridges, trestles, culverts and tunnels (but not track or 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 the acquisition of the line for public use; and (3) MNN shall comply with the interim trail use/rail banking procedures set forth below.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, MNN may fully abandon the line, provided the conditions imposed above are met.

7. MNN is directed to serve a copy of this decision on the shippers on the line within 5 days after the service date of this decision and to certify to the Board that it has done so.

8. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 24, 1997, 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 the filing fee, which currently is set at \$900. See 49 CFR 1002.2(f)(25).

9. 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.”**

10. Provided no OFA has been received, this exemption will be effective November 29, 1997. Petitions to stay must be filed by November 24, 1997, and petitions to reopen must be filed by December 9, 1997.

11. Pursuant to the provisions of 49 CFR 1152.29(e)(2), MNN shall file 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 November 16, 1998, 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 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