

Docket No. AB-575 (Sub-No. 2X)

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Let me start out this response with a couple of blanket statements. First off, the statements and opinions in this response are my own and do not in any way represent those of my employer. Secondly, I am not inherently against BNSF or Montana Rail Link; rather I am in favor of a rail system that actually functions.

This response is interesting to write due to it being a response to the request for exemption from regulations, rather than a response to the discontinuance of service itself. Even so, some of my comments in here apply to the discontinuance request as a whole, rather than just the exemption petition.

Section I: Rebutting MRL's Arguments in Favor of an Exemption**"A. The Board need not apply the prior approval requirements of Section 10903 to the discontinuance of service in order to carry out the rail transportation policy of Section 10101."**

Per 49 U.S.C. 10101, the regulatory policy of the government is to, among many others, "ensure the...continuation of a sound rail transportation system with effective competition among rail carriers," "operate transportation facilities and equipment without detriment to the public health and safety," and "avoid undue concentrations of market power."

To ensure effective competition among rail carriers would require looking at not just local (single line) competition, but also regional (broad/network) competition. (I will elaborate more on this later when MRL discusses competition).

To ensure the operation of transportation without harming public health and safety would require rail operations that are safe and environmentally friendly. The majority of road (2,001+ hp) locomotives MRL owns are Tier 2 or higher (52.7%), and all of their big (4,000+ hp) locomotives are Tier 2 or higher (100%). By comparison, only 50.6% of road locomotives BNSF owns are Tier 2 or higher, and only 60.5% of big locomotives BNSF owns are Tier 2 or higher. By running more high emissions locomotives, BNSF harms public health (more than MRL).

To ensure the avoidance of market power concentrations would require maintaining multiple major rail carriers serve each state or region.

"1. Consistent with the standard in Section 10903, the present and future public convenience and necessity require and permit MRL's discontinuance of service."

MRL maintains that their discontinuance of service would not adversely impact customers or rural and community development "because all customers will continue to receive common carrier service." While this is legally true, it is not functionally true due to the different operating models employed by MRL and BNSF. As a regional railroad (Class II), MRL can provide more consistent and frequent service to customers along its line. BNSF, on the other hand, as a Class I, can provide more broad (geographic) service, but at the cost of less consistent and less frequent service to on-line customers.

"2. Detailer scrutiny of the MRL discontinuance of service is not necessary to carry out the rail transportation policy of Section 10101."

See my comments above.

“B. The Board need not apply the prior approval requirements of Section 10903 to the MRL discontinuance to protect shippers from the abuse of market power, and the MRL discontinuance is of limited scope.”

MRL maintains the transition of service to BNSF “will not and cannot subject shippers to market power abuse,” because “no shipper will lose rail service or experience a reduction in the number of carriers with access to its facilities.” As with earlier, this is legally true but not functionally true. While the nominal amount of service will remain the same, the actual amount, quality, frequency, and reliability of service could easily decrease. In addition to the issues caused by different operating patterns, large railroads (Class I, such as BNSF) are more easily able to stop service certain customers, or even sectors, because the service isn’t profitable enough. Discussing this further would require multiple hours of college lectures, so I’ll just mention that this is due to the ‘Operating Ratio,’ and move on.

MRL maintains their discontinuance is of limited scope “because they consist only of the discontinuance of MRL’s operations.” The largest Class II railroad completely ending all service is not ‘limited scope,’ even if it is a “regional” railroad. Furthermore, MRL’s discontinuance would grant BNSF a near-monopoly on rail service in Montana. Currently, BNSF operates about 60% of rail mileage in Montana, MRL operates about 25%, and Union Pacific operates about 5%. If MRL discontinues service, BNSF would operate just under 90% of all rail mileage in Montana. The Southern Pacific-Santa Fe (SPSF) merger in the 1980s was rejected by the ICC on the grounds that the merger would have a “substantial adverse effect,” mainly due to the two railroads having large parallel operations in California, and the combined system having a monopoly in New Mexico. MRL and BNSF have large parallel operations in Montana, and a combined system could create a near-monopoly in Montana. Historical precedent requires the STB to reject the petition for exemption to allow for (at minimum) a board hearing on this matter. A board hearing would allow all the facts and figures surrounding MRL’s discontinuance to be put forward to the STB and would allow an opportunity for customers and shippers affected to voice their concerns (or praises) for the transaction.

Thank you for your consideration

Chandler Kitson, EIT

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All parties of record