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SERVICE DATE - NOVEMBER 17, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-57 (Sub-No. 48X)

SOO LINE RAILROAD COMPANY--ABANDONMENT EXEMPTION--IN MARSHALL AND
ROBERTS COUNTIES, SD

Decided: November 16, 1999

By petition filed on July 30, 1999,¹ Soo Line Railroad Company, doing business as Canadian Pacific Railway (Soo), 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 extending from milepost 208.8± near Rosholt to the end of the line at milepost 236.3± near Veblen, a distance of approximately 27.5 miles, in Marshall and Roberts Counties, SD. Cenex Harvest States (Cenex) timely filed a reply in partial opposition to the proposed abandonment.² United States Senator Tom Daschle, South Dakota Governor William J. Janklow, and South Dakota State Senator Paul Symens filed letters in opposition. In addition, letters were filed by a number of other individuals who oppose the proposed abandonment for the line segment from Rosholt to Claire City (milepost

¹ Notice of the filing was served and published in the Federal Register on August 19, 1999 (64 FR 45298). Replies to the petition were due September 8, 1999.

² By letter filed on September 17, 1999, Cenex withdrew its protest to the proposed abandonment. Subsequently, by letter filed on September 30, 1999, counsel for Cenex requests that "Save the Rail Committee" (the Committee) be substituted for Cenex as protestant and that the pleading filed on September 8 be considered as filed on its behalf. Counsel states that the reply should have been filed on behalf of the Committee. He does not explain why the Committee was not named on the September 8 pleading or why the evidence submitted by Cenex should be considered as filed by the Committee. Soo replied on October 1, 1999. Counsel's appearance on behalf of the Committee is not timely and does not comport with our rules at 49 CFR 1103.4. Therefore, we will not substitute the Committee for Cenex.

227.3). Soo replied to the Governor's filings.³ The United Transportation Union requests imposition of labor protective conditions. We will deny the petition for exemption.

BACKGROUND

The line proposed for abandonment was constructed (circa 1914) with 60-pound rail⁴ by a predecessor of Soo. It is the stub-end of a line that once served a larger segment of northeastern South Dakota. The line segment west of Veblen was abandoned in 1971. Historically, the line was used for freight and passenger trains, with the surrounding land use being primarily agricultural and including grain elevators and bulk oil distributors.

According to Soo, most commercial activity along the line has ceased. Soo seeks to abandon the line because in its view the line is no longer viable. It asserts that there is not sufficient traffic to justify continued service to the facilities on the line and that it can no longer operate the line profitably considering the cost of needed upgrades and repairs. It states that attempts to increase traffic volume or to sell the line to another operator have been unsuccessful. Because the line is stub-ended, it carries no overhead traffic.

TRAFFIC, REVENUE AND COSTS

Soo submitted traffic, revenue, and cost data in its petition for exemption. Traffic on the line consists of corn, wheat, soybeans, canola seed, urea, and fertilizer. According to Soo, there are two active shippers on the line: Cenex, located in Claire City; and Sissiton-Milbank Elevator (Sissiton), located in New Effington, SD. Soo states that it handled for Cenex 310 carloads in 1996, 391 in 1997, and 375 in 1998, and for Sissiton 35 carloads in 1996, 27 in 1997, and none in 1998.

³ With the exception of Cenex and the Governor's filings, it does not appear that Soo received copies of the other correspondence. All parties should, in the future, serve copies of their comments on the railroad. Soo would not have been entitled to file rebuttal in any event. That right is only assured, under our abandonment rules, in formal applications. See The Burlington Northern and Santa Fe Railway Company--Abandonment of Chicago Area Trackage in Cook County, IL, STB Docket No. AB-6 (Sub-No. 382X) slip op. at 1 (STB served Sept. 21, 1999), and Central Railroad Company of Indiana--Abandonment Exemption--In Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN, STB Docket No. AB-459 (Sub-No. 2X) slip op. at 3 (STB served May 4, 1998).

⁴ Aside from this historical information, Soo does not indicate what materials are currently in place, other than the fact that, in 1978, Ortonville crushed rock was laid as ballast.

According to Soo's figures, in calendar year 1998,⁵ the line generated gross revenues of \$431,069, with avoidable costs of \$501,035, resulting in an avoidable loss from operations of \$69,966. When opportunity costs are factored in, Soo's estimated loss totals \$79,492. For calendar year 1999,⁶ Soo projects the same revenues and losses as in the base year. Soo estimates rehabilitation costs of \$5,525,781 to bring the line up to Federal Railroad Administration (FRA) Class 1 safety standards. This estimate includes the cost of replacing 26,000 ties and 16.6 miles of rail, application of 344 carloads of ballast, and \$40,000 for bridge repair.

COMMENTS IN OPPOSITION

Senator Daschle, expressing the concerns of his constituents, submits that rail service is important to the Claire City area. According to Senator Daschle, the market for grain that is shipped via the line is growing. He states that loss of rail service would cause an increase in shipping costs for farmers in the region, thus making them less competitive in the current grain market. He indicates that these increased shipping costs could lead to the eventual closing of the grain elevator, a prospect that poses a serious threat to the existence of this rural community. Senator Daschle forwarded a letter he received from concerned citizens of the Claire City area who oppose the proposed abandonment of the line segment from Rosholt to Claire City. The letter, signed by nine individuals, asserts that the Cenex elevator at Claire City is viable, grain volume has increased from 700,000 bushels in 1994 to 1.7 million bushels in 1997, and that an average of 380 carloads a year are shipped, generating approximately \$550,000 in revenue for Soo. Given the revenue that the line generates, these individuals argue that Soo should not have allowed the line to fall into disrepair. They also state that recent embargoes have been due to unusual flooding conditions and, now that normal weather conditions have returned, embargoes should no longer be necessary. These citizens, like Senator Daschle, express concern over the adverse impact that a loss of rail service will have on Claire City and the surrounding areas.

⁵ Soo selected calendar year 1998 as its base year. Under our regulations, the base year is defined for purposes of 49 CFR 1152 as the latest 12-month period, ending no earlier than 6 months prior to the filing of an abandonment or discontinuance application, for which data have been collected at the branch level. Although this is a petition for exemption and not an application, Soo has used the wrong time frame under our definition of base year, which applies to all of part 1152. See 49 CFR 1152.2(c).

⁶ Soo selected calendar year 1999 for its forecast year. Under our regulations, the forecast year is defined for purposes of 49 CFR part 1152 as the 12-month period beginning with the first day of the month in which the application is filed with the Board, for which future revenues and costs are estimated. Soo has again used the wrong time frame (see supra note 5) under our definition of forecast year. See 49 CFR 1152.2(h).

Governor Janklow filed two letters, one in response to the petition and the other in response to Soo's comments to the Governor's earlier letter.⁷ While the Governor opposes the entire abandonment, he does recognize that the segment between Claire City and Veblen has been out-of-service for approximately 2 years.⁸ He is concerned about the impact that the abandonment will have on the farming economy of northeast South Dakota and the adjacent states, the prices paid for grain products, alternative shipping options, and the public infrastructure. The Governor states that local interests are actively seeking a solution or alternative to abandonment of the line and requests that our decision on Soo's petition be postponed until 90 days after November 17, 1999. Alternatively, the Governor requests that the time for filing an offer of financial assistance (OFA) under 49 CFR 1152.27 be extended by 90 days so that options besides abandonment can be fully explored.⁹ According to the Governor, it is the citizens of northeast South Dakota who are the ones that will be most adversely affected by the proposed abandonment,¹⁰ and it is these citizens who have requested his office to seek additional time to negotiate with Soo or solicit for and recruit an alternative operator for the line. Finally, the Governor notes that, in 1994, Soo received an FRA grant through the South Dakota Department of Transportation (SDDOT) for \$99,241 to repair portions of the line. He states that, as part of the grant, Soo agreed to repay the grant in full upon the filing for abandonment authority. According to the Governor, SDDOT has not requested repayment at this time, but instead seeks the cooperation of Soo in finding a solution to this situation.¹¹

⁷ Soo in turn responded to the Governor's second letter.

⁸ That segment is still an active line of railroad that Soo here seeks to abandon.

⁹ Under 49 U.S.C. 10904(c), an OFA is due 120 days after the filing of an abandonment application. We have interpreted the 120-day statutory time frame to apply to exemption proceedings as well as to application proceedings. See 49 CFR 1152.27(b)(2). Accordingly, we have established a deadline of no more than 110 days from the date of filing of the petition to issue a decision on the merits to accommodate the letter and spirit of the statutory time limit in 49 U.S.C. 10904(c). See 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).

¹⁰ The Governor submits that Cenex may be willing to give up its elevator at Claire City to preserve its working relationship with Soo, but that the deal it struck with Soo shows callous disregard for the small agricultural community of Claire City.

¹¹ In reply, Soo admits that in 1994 it received a grant to repair flood damage to the line, but states: (a) that the grant was specifically excepted from the usual requirement that such grants must be repaid if the line is not maintained for 5 years; and (b) that, even if the 5-year maintenance period were applicable, the line will have been maintained for all active shippers for 5 years following execution of the April 1, 1994 grant.

State Senator Symens opposes the proposed abandonment from Rosholt to Claire City. He submits that the farm economy is struggling and that the local grain shippers cannot sustain higher truck rates that will apply with a loss of rail service. In addition to increased rates, he states that increased truck service will result in severe damage to roads in this area. The same concerns are expressed in letters from area residents.¹²

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued 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.

The exemption process is designed to minimize regulatory burdens. However, it is used only when the information provided is sufficient for us to reach an informed decision. Where there is an inadequate record on which to grant an abandonment petition for exemption, the petition will be denied outright. See Boston and Maine Corporation--Abandonment Exemption--In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 75X) et al. slip op. at 5 (STB served Dec. 31, 1996). In this case there is insufficient information for us to make an informed decision on the merits of the abandonment petition for exemption.

As in any abandonment case, whether authority is sought by application or petition, the railroad must demonstrate that the line in question is a burden on interstate commerce. Typically, in an attempt to make that showing, the carrier submits evidence to show that the costs that it incurs for the line exceed the revenues attributable to it. While Soo has attempted to make such a showing, it is without supporting documentation that would enable us to analyze the data that it submitted. Soo provides no support for its sizeable rehabilitation estimate of \$5,525,781. Soo's estimate is predicated on rehabilitating the line to FRA Class 1 safety standards, but it provides no statement as to the present condition of the line, and gives only historical information about the materials used to construct it. Therefore, we cannot determine if the line is at or below FRA Class 1 safety standards, and if so, what it would cost to rehabilitate the line to the Class 1 level.¹³

¹² We received 45 letters from concerned citizens, including employees of the Claire City elevator, farmers, community businesses, and banks.

¹³ A carrier seeking abandonment authority is only permitted to claim the cost of rehabilitating the line to meet FRA Class 1 safety standards. Therefore, we must have evidence that the track in fact falls below that level. The information provided by Soo—the number of ties, the type of rail, and the amount of ballast needed to rehabilitate the line—appears to be excessive, and is
(continued...)

With no indication of how it values track materials, Soo's \$92,414 estimate of the net liquidation value (NLV)¹⁴ of the line is not supported. Also, the removal costs of \$479,684 appear to be high for such a rural area.

Soo's unsupported maintenance-of-way (MOW) figure of \$71,324 also is questionable. Other than property taxes of \$13,210, there are no other on-branch costs shown by Soo.

Off-branch costs¹⁵ are also not adequately explained. Soo states that it used Uniform Rail Costing System (URCS) data in computing these costs, which amount to \$416,501 and represent most of the \$501,035 in total avoidable costs. Without supporting documentation and an explanation as to how URCS was applied to the traffic at issue, we cannot verify the accuracy of these costs.

Finally, in computing opportunity costs, Soo uses the 1997 pre-tax cost of capital rate of 17.5% to calculate the nominal return on value,¹⁶ when it should have used the 1998 figure of 15.6%.

While abandonment decisions are not based solely on mathematical computations and considerations, the petitioner here has failed to show that the current situation imposes a burden on it that outweighs the harm that would befall shippers, the public and the surrounding community, if the line were abandoned. The rail transportation policy provides, among other things, that the Board in regulating the railroad industry is to "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense." The petition shows that the actual traffic moving over the line has been substantial. The comments suggest the potential for increased traffic in the

¹³(...continued)
more in line with rehabilitation to the Class 2 level or higher.

¹⁴ NLV is comprised of net salvage value and net land value. Net salvage value is based on gross salvage value less removal costs.

¹⁵ Off-branch avoidable costs are the costs associated with the traffic before it comes on to, and after it leaves, the line.

¹⁶ To compute opportunity costs, the investment base (or value of road properties), which is made up of the sum of allowable working capital, the NLV of the line, and current income tax benefits (if any) resulting from abandonment, is multiplied by the nominal rate of return. The resulting figure is then adjusted by applying a holding gain (or loss), which is the increase or decrease in value that a carrier will expect to realize by holding the assets 1 additional year. Opportunity costs reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets.

future. While the parties who filed comments in opposition to the proposed abandonment are not shippers, they are still affected by the proposed abandonment and their interests must be balanced with other factors in determining if abandonment should be permitted. Indeed, our statute specifically charges us to consider whether an abandonment will have a serious, adverse impact on rural and community development. In view of the extent of the public opposition here and Soo's failure to support the data that it presented,¹⁷ we are unable to conclude, on the present record, that regulation is not required to carry out the rail transportation policy. We believe that a more thorough review is warranted, and, therefore, conclude that the petition for exemption should be denied.

Denial of this petition is without prejudice to Soo refiling an appropriate abandonment application or a petition for exemption that cures the defects found in the current proposal.¹⁸ Any new filing must be under a new docket subnumber accompanied by a new filing fee.

Our denial of Soo's petition for exemption moots labor protection, environmental issues, and the Governor's extension request.¹⁹

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Soo's petition for exemption is denied.

¹⁷ In addition to failing to provide supporting documentation, Soo did not bifurcate its data so as to permit an analysis of the segment between Claire City and Veblen, where there is less opposition and little or no current traffic.

¹⁸ Soo may choose to bifurcate the proposal between the two segments and file them independently.

¹⁹ We note that 49 U.S.C. 10904 provides a mechanism for those who want to continue rail service that the Board has authorized to be discontinued or abandoned. Under section 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an OFA. Should Soo refile for abandonment authority and if that authority is granted, the Committee, any area businesses or other interested party that wishes to retain the line may acquire the line or subsidize its continued operation under the OFA procedures contained in 49 U.S.C. 10904 and 49 CFR 1152.27. In view of the interest in retaining the line that has been expressed by local citizens and the Governor, we also encourage these persons to work cooperatively with the railroad and other interested persons outside the abandonment process to pursue possible sale of the line or other alternatives to abandonment.

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2. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary