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SERVICE DATE - MAY 26, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 381X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY--
ABANDONMENT EXEMPTION--IN HENNEPIN AND RAMSEY COUNTIES, MN

Decided: May 25, 1999

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 2.43 miles of rail line between milepost 0.00 near East Minneapolis and milepost 2.43 near Rollins Oil, in Hennepin and Ramsey Counties, MN. Notice of the exemption was served and published in the Federal Register on November 30, 1998 (63 FR 65865-66). By decision served on December 29, 1998, a 180-day public use condition was imposed under 49 U.S.C. 10905 for the 2.43-mile line at the request of the Minnesota Department of Transportation (MnDot). The condition required that BNSF keep the right-of-way intact, including bridges, trestles, culverts and tunnels, for a period of 180 days after the effective date of the exemption to permit MnDot and any other state or local government agency or other interested person to negotiate for acquisition of the line for public use. The 180-day period will expire on June 28, 1999.¹

On March 2, 1999, BNSF requested that the Board partially vacate the public use condition for the line segments between milepost 2.18 and milepost 2.43 and between milepost 0.00 and Broadway Street NE, in order to facilitate the sale of properties within the abandonment/discontinuance area. On March 19, 1999, the Minneapolis Park and Recreation Board (PRB) filed a letter with the Board, reporting on a meeting held by representatives of state, county, and local governmental entities, and indicating agreement by all parties in attendance that the 2.43-mile line has the potential for meeting the transportation needs for rapid transit and commuter/recreational trails. The letter also indicated that Hennepin County Regional Rail Authority (HCRRA) will be the lead agency for the combined efforts of the participants. In view of the continued and demonstrated public interest in the use of the right-of-way, BNSF's request for partial relief from the application of the public use condition was denied by decision served on April 21, 1999.

On May 13, 1999, HCRRA, on behalf of the cities of Minneapolis and Roseville, the Village of St. Anthony, PRB, MnDot, and the Metropolitan Council, requests that the public use condition be extended for 90 additional days. HCRRA maintains that BNSF either failed to respond or waited

¹ The December 29, 1998 decision also imposed an environmental condition that required BNSF, prior to engaging in any salvage activities, to consult with the Minnesota Pollution Control Agency to address possible impacts resulting from salvage operations.

over three months to respond to requests for information concerning the right-of-way's appraisal value, environmental condition, permits or leases, and fiber optics, and asserts therefore that 90 days were lost in the process due to BNSF's actions. HCRRA also states that its staff is in the process of conducting a title search, an appraisal, and a Phase I Environmental Review of the right-of-way.

Under 49 U.S.C. 10905, a public use condition expires 180 days from the effective date of the decision approving the abandonment. The 180-day public use condition imposed in the December 29, 1998 decision is due to expire on June 28, 1999. It is well settled that 180 days is the maximum period allowed by law for a public use condition and that a public use condition may not be extended. See 49 U.S.C. 10905; 49 CFR 1152.28(b); and Rail Abandonment--Public Use Conditions--Revision, 8 I.C.C.2d 392, 395-98 (1992). Therefore, the requested extension must be denied.

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

It is ordered:

1. The request to extend the public use condition is denied.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary