

Crockford, Konrad S.

From: Crockford, Konrad S.
Sent: Friday, May 20, 2022 12:19
To: merril.lieb@bnsf.com
Cc: CZorbaugh@bakerandmiller.com; wmullins@bakerandmiller.com; Amy McBeth (Amy.McBeth@BNSF.com)
Subject: RRWV Cass Co, ND Abandonment - Request for Additional Information
Attachments: Commission Staff Request for Additional Information - BNSF.pdf

Good Afternoon Mr. Lieb,

North Dakota Public Service Commission (Commission) Staff has reviewed the abandonment documents submitted for:

Red River Valley & Western Railroad Company – Abandonment Exemption – In the City of Horace in Cass County, North Dakota, AB-391 (Sub-No. 11X)

Staff understands that BNSF owns the real estate underlying the rail line and the bridge and therefore, is requesting further information from BNSF. Please see the attached letter for details.

Thank you,

Konrad Crockford
Director, Compliance Division

*Weights & Measures • Railroad Safety • Pipeline Safety
Auction Licensing • Risk Management • Damage Prevention*

701.328.4097 • kcrockford@nd.gov • www.psc.nd.gov

NORTH
Dakota | Public Service Commission
Be Legendary.™

6 **RR-22-161** Filed: 5/20/2022 Pages: 6
Email with attached letter requesting additional information

Public Service Commission

Konrad Crockford



Public Service Commission

State of North Dakota

COMMISSIONERS

Julie Fedorchak
Randy Christmann
Sheri Haugen-Hoffart

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

May 20, 2022

Merril Lieb
AVP Shortline Development
BNSF Railway Company
P.O. Box 961039
Fort Worth, TX 76161
merril.lieb@bnsf.com

via email only

RE: Red River Valley & Western Railroad Company – Abandonment Exemption – In the City of Horace in Cass County, North Dakota, AB-391 (Sub-No. 11X)
PSC Case No. RR-22-161

Dear Mr. Lieb,

On April 22, 2022, North Dakota Public Service Commission (Commission) Staff sent the attached letter to counsel for Red River Valley & Western Railroad Company (RRVW) regarding the abandonment of a 2.29-mile railroad line (Line) in the City of Horace in Cass County, North Dakota.

Staff has discussed the matter with RRVW counsel and understands BNSF Railway (BNSF) owns the real estate underlying the Line. Additionally, BNSF plans to convey the property to the Fargo Moorhead Diversion Authority (FMDA) after consummation of the abandonment as indicated in BNSF's March 23, 2022 Support Letter.

North Dakota Century Code (N.D.C.C.) Chapter 49-09 Acquiring and Transferring Utility Property relates to the sale/transferring of the railroad right-of-way real estate and the bridge structure located at milepost 11.0. North Dakota has an established order of precedence for the sale of abandoned railroad property. Presently, Staff has not received any information as to how this sale/transfer of real property complies with or is exempt from this provision.

Furthermore, N.D.C.C. Chapter 49-09 requires a railroad to remove and clear all rail, ties, materials, supplies, and debris from the railway line and *N.D.C.C. Chapter 49-11 Railroad Bridges, Crossings, Intersections, and Fences*, requires a railroad to restore every stream of water, watercourse, street, highway, or canal across, along, or upon

Red River Valley & Western Railroad Company – Abandonment
PSC Case No. RR-22-161
May 20, 2022
Page 2

which such railroad may be constructed to its former state or to such condition that its usefulness shall not be materially impaired. Staff also understands the bridge is the property of BNSF. Staff has not received any information as to how allowing the bridge to stay in place complies with or is exempt from this provision.

Staff understands the necessity of this abandonment and the project being undertaken by FMDA; however, to ensure the process complies with State Law, Staff is requesting a response from BNSF regarding the two issues raised within this letter. We would appreciate your response by June 3, 2022.

If you have any questions, please feel free to contact me by phone at 701-328-4097 or email at kcrockford@nd.gov.

Sincerely,



Konrad Crockford
Director, Compliance Division

c: Amy McBeth, Regional AVP, Public Affairs, BNSF, amy.mcbeth@bnsf.com
Crystal Zorbaugh, Baker & Miller, PLLC, czorbaugh@bakerandmiller.com
William Mullins, Baker & Miller, PLLC, wmullins@bakerandmiller.com

Attachment

Crockford, Konrad S.

From: Crockford, Konrad S.
Sent: Friday, April 22, 2022 15:59
To: CZorbaugh@bakerandmiller.com; wmullins@bakerandmiller.com; merril.lieb@bnsf.com
Subject: RRVW Cass Co, ND Abandonment - Request for Additional Information and Clarification
Attachments: RRVW - Abandonment Exemption - In the City of Horace in Cass County ND 04-22-2022.pdf

Good Afternoon Ms. Zorbaugh,

North Dakota Public Service Commission (Commission) Staff has reviewed the abandonment documents submitted for:

Red River Valley & Western Railroad Company – Abandonment Exemption – In the City of Horace in Cass County, North Dakota, AB-391 (Sub-No. 11X)

Please see the attached letter for Staff's request for additional information

Thank you,

Konrad Crockford
Director, Compliance Division

*Weights & Measures • Railroad Safety • Pipeline Safety
Auction Licensing • Risk Management • Damage Prevention*

701.328.4097 • kcrockford@nd.gov • www.psc.nd.gov

NORTH
Dakota | Public Service Commission
Be Legendary.™



Public Service Commission
State of North Dakota

COMMISSIONERS

Julie Fedorchak
Randy Christmann
Sheri Haugen-Hoffart

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

April 22, 2022

Crystal Zorbaugh
Counsel for Red River Valley & Western Railroad
Baker & Miller, PLLC
2401 Pennsylvania Ave. NW
Suite 300
Washington, DC 20037
czorbaugh@bakerandmiller.com

via email only

RE: Red River Valley & Western Railroad Company – Abandonment Exemption – In the City of Horace in Cass County, North Dakota, AB-391 (Sub-No. 11X)
PSC Case No: RR-22-161

Dear Ms. Zorbaugh,

The North Dakota Public Service Commission (Commission) received your letter dated March 29, 2022 and attached Environmental and Historic Report (EHR) dated March 22, 2022 concerning Red River Valley & Western Railroad Company's (RRVW) abandonment of a 2.29-mile railroad line (Line) in the City of Horace in Cass County, North Dakota.

North Dakota Century Code (N.D.C.C.) Chapter 49-09 Acquiring and Transferring Utility Property relates to the sale/transferring of the railroad right-of-way real estate and the bridge structure located at milepost 11.0. North Dakota has an established order of precedence for the sale of abandoned railroad property and the EHR makes no mention of how this sale/transfer of real property complies with or is exempt from this provision. While Staff understands that RRVW does not own the real estate underlying the Line, the plan for sale/transfer of the Line is widely stated within the EHR and therefore, should include compliance with N.D.C.C. Chapter 49-09.

Furthermore, N.D.C.C. Chapter 49-09 requires a railroad to remove and clear all rail, ties, materials, supplies, and debris from the railway line and *N.D.C.C. Chapter 49-11 Railroad Bridges, Crossings, Intersections, and Fences*, requires a railroad to restore every stream of water, watercourse, street, highway, or canal across, along, or upon

Red River Valley & Western Railroad Company – Abandonment
PSC Case No. RR-22-161
April 22, 2022
Page 2

which such railroad may be constructed to its former state or to such condition that its usefulness shall not be materially impaired. Staff acknowledges RRWW addressed the removal of the rail, ties, and material; however, the EHR states the bridge will remain in place. Once again, the EHR is asserting the bridge is the property of BNSF; however, the EHR should include how the abandonment of the bridge and the decision to allow it to remain in place complies with or is exempt from N.D.C.C. Chapters 49-09 and 49-11.

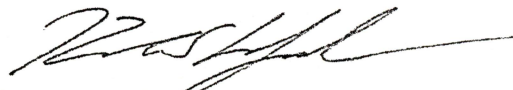
Additionally, the EHR states RRWW will cease operating over six public grade crossings and one private crossing. However, the EHR makes no mention if the crossings (tracks, ties, panels, etc.) will be removed and the roads/driveway returned to its former state. Please provide further details on the plans for these grade crossings in addition to any communication between RRWW and the local road authority regarding the removal of these crossings.

Finally, there is one siding located on this stretch between Center Ave. and Park Drive. Is this siding part of the track which will be removed and salvaged?

This letter is not meant to be all inclusive and Staff encourages you to thoroughly review N.D.C.C. Chapters 49-09 and 49-11 to ensure RRWW's abandonment of the Line complies with North Dakota Laws.

We look forward to your timely response regarding these concerns. Please feel free to contact me by phone at 701-328-4097 or email at kcrockford@nd.gov.

Sincerely,



Konrad Crockford
Director, Compliance Division

c: Merrill Lieb, AVP Shortline Development, BNSF, merril.lieb@bnsf.com
William Mullins, Baker & Miller, PLLC, wmullins@bakerandmiller.com