


PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

M E M O R A N D U M

TO: Commissioners Fedorchak, Christmann, and Haugen-Hoffart
Steve Kahl, Executive Secretary

FROM: Konrad Crockford, Director, Compliance Division 
John Schuh, General Counsel

DATE: July 13, 2022

RE: RRVW Abandonment – In the City of Horace in Cass County, North Dakota
PSC Case No: RR-22-161

On April 1, 2022, the Commission received notice from Red River Valley & Western Railroad Company (RRVW) of its intent to file for abandonment and discontinuance of their common carrier obligation over a 2.29-mile railroad line (Line) in the City of Horace in Cass County, North Dakota with the Surface Transportation Board (STB) (indicated by the green highlight on the map found on page three). The abandonment is being done at the request of the Fargo Moorhead Diversion Authority (FMDA) to construct the Fargo Moorhead Diversion flood control project.

RRVW acquired the tracks, physical assets, and common carrier obligation for the Line and various other rail lines as part of an acquisition of 656 miles of rail line from BNSF in 1987; however, BNSF retained ownership of the real estate underlying the Line. Presently, there are no customers receiving service. The Line's sole customer, CHS Dakota Plains Ag (CHS), last received service on March 25, 2020 and is in the process of relocating its operations to accommodate the FMDA flood control project. CHS filed a letter of support for the abandonment. Additionally, the Line has seven grade crossings (six public crossings and one private crossing) and operates over one wooden trestle bridge (bridge) over the Sheyenne River.

Initially RRVW's plan after the abandonment was consummated, was to remove and salvage the rail, ties, and material and to leave the bridge in place, at the request of the FMDA, to use as a walking/biking trail. Furthermore, it was BNSF's intent to convey the underlying real estate (right-of-way) to FMDA for the purpose of constructing the FMDA flood control project.

After reviewing the notice and associated documents, Staff had concerns that portions of *N.D.C.C. Chapter 49-09 Acquiring and Transferring Utility Property* and *N.D.C.C. Chapter 49-11 Railroad Bridges, Crossings, Intersections, and Fences* may not have been referenced during the abandonment planning process. Specifically, *N.D.C.C. § 49-09-04.2. Abandoned railroad right of way – Sale – Priority of purchasers* and *N.D.C.C. § 49-11-04. Highways and watercourses to be restored to former state*. Staff noted that:

- the process being proposed for conveying right-of-way failed to address how it was compliant with or exempt from the provisions of N.D.C.C. § 49-09-04.2;
- there was no information provided regarding the removal of the grade crossings and restoration of the roads as required by N.D.C.C. § 49-11-04; and
- the plan to leave the bridge in place failed to address how it was compliant with or exempt from the provisions of N.D.C.C. § 49-11-04.

Staff reached out to both RRVW and BNSF with these concerns. As a result, a conference call was held between RRVW, BNSF, FMDA, STB, and Staff to discuss the issues which led to the following solutions:

1. FMDA owns the real estate directly adjacent to the railroad right-of-way which will be used for the flood control project (indicated by the blue highlight on the map found on page three). Once the abandonment is consummated by the STB, BNSF will convey the relevant portion of the right-of-way to FMDA. BNSF will then dispose of the remaining right-of-way in accordance with N.D.C.C. § 49-09-04.2. Staff has no objection with this plan.
2. At the request of FMDA, RRVW will leave the bridge and a portion of the ballast along the Line in place to potentially allow for the development of a walking/biking trail if FMDA is able to acquire the remaining right-of-way. To ensure there is a responsible party for the salvage of the remaining ballast and bridge if FMDA is unsuccessful in acquiring the remaining right-of-way, RRVW and FMDA will execute a *Transfer of Salvage Responsibility* transferring all salvage responsibility from RRVW to the FMDA thereby complying with N.D.C.C. § 49-11-04. Staff has no objection with this plan.
3. RRVW will coordinate with the local road authority on the removal of the seven grade crossings and restoration of the roads thereby complying with N.D.C.C. § 49-11-04. Staff has no objection with this plan.

To ensure satisfactory compliance, Staff requested BNSF to acknowledge, in writing, their intent to comply with the provisions of N.D.C.C. § 49-09-04.2 for the sale of the right-of-way. BNSF completed this on June 14, 2022. Additionally, Staff requested a copy of the fully executed *Transfer of Salvage Responsibility* between RRVW and FMDA to be filed with the Commission. RRVW has submitted their response to Staff's grade crossing and road restoration concerns.

Staff would like to emphasize the parties' cooperation and willingness to work with Staff to reach a satisfactory conclusion. Staff believes all issues raised will be satisfactorily addressed provided the above documents are submitted to the Commission.

