

## Decision No. 484-R-1990

September 10, 1990

**IN THE MATTER OF a reconsideration, pursuant to section 171 of the National Transportation Act, 1987, R.S.C., 1985, c. 28 (3rd Supp.) and Order No. [1988-R-547](#) dated June 30, 1988, of an application by Canadian Pacific Limited made pursuant to section 160 of the National Transportation Act, 1987 (formerly section 255 of the Railway Act, R.S.C., 1985, c. R-3), for authority to abandon the operation of a portion of the Boundary Subdivision from Robson West (mileage 30.7) to Midway (mileage 126.6) including the Carson and Carmi Spurs, a total distance of 100.3 miles, in the Province of British Columbia.**

File No. T 6120/021

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### **INTRODUCTION**

On October 7, 1987, Canadian Pacific Limited (hereinafter CP) applied to the Railway Transport Committee (hereinafter RTC) of the Canadian Transport Commission for authority to abandon the operation of the portion of the Boundary Subdivision from a point near Robson West (mileage 30.7) to Midway (mileage 126.6) including the Carson and Carmi Spurs (hereinafter the branch line), a total distance of 100.3 miles, in the Province of British Columbia.

A map of the area is attached as Appendix A.

On June 30, 1988, the National Transportation Agency (hereinafter the Agency) issued Order No. [1988-R-547](#) ordering CP to continue the operation of the branch line and that the application be reconsidered by the Agency no later than two years from the date of the Order.

On March 22, 1990, in accordance with Order No. [1988-R-547](#) and pursuant to section 171 of the National Transportation Act, 1987 (hereinafter the NTA, 1987), the Agency issued a Notice of Reconsideration advising the public that it would be reconsidering CP's application pursuant to sections 161 to 170 and 173 and 174 of the NTA, 1987. The notice advised the public that submissions setting forth grounds for opposition to the application or submissions concerning the present and future economic prospects of the branch line were to be filed with the Agency sixty days from the date of the notice.

In response to the Notice of Reconsideration, twenty-five interventions were filed with the Agency. All interventions opposed the application and several interveners, notably the Province of British Columbia (hereinafter the Province) and Pope & Talbot Ltd., Canpar Industries Ltd. and Bradford Enercon Inc. (hereinafter the Grand Forks Shippers) and the Coalition for Information on Pulpwood Expansion (hereinafter the Coalition), included evidence concerning the present and future economic prospects for the branch line. The majority of interveners also requested that a public hearing be convened to reconsider the application. However, having considered all of the submissions filed, the Agency has decided that a public hearing is not required in this case and that a decision can be rendered based on the information filed with the Agency.

On May 28, 1990, the Grand Forks Shippers filed a Notice of Motion with the Agency for an Order which would (1) segment the Carson Spur and the portion of the branch line situated in Grand Forks between the railway bridges over the Kettle River (hereinafter the Grand Forks Segment) from the rest of the branch line, (2) require CP to answer whether it expected to incur an actual loss in the interswitching of carloads to the Burlington Northern Railroad Company (hereinafter BN) from the Grand Forks Segment under certain assumptions provided by the Grand Forks Shippers and (3) if an actual loss is expected to be incurred on the Grand Forks Segment, to

provide detailed documentation in support of the calculations yielding that result. This motion will be addressed within the context of this Decision.

### **ACTUAL LOSSES**

Where an application is opposed, the Agency is required to determine the actual loss, if any, of the railway company attributable to the operation of the branch line in each of the prescribed financial years and to give public notice of its determination as set out in section 163 of the NTA, 1987.

In accordance with section 163 of the NTA, 1987, the Agency has reviewed CP's statements of actual loss for the branch line in respect of the prescribed financial years 1987, 1988 and 1989. After consideration of the submissions received, the Agency has made a final determination of the actual loss for each of the prescribed financial years, pursuant to the provisions of the Railway Costing Regulations, SOR/80-940 and section 157 of the NTA, 1987 as follows:

Year	Total Costs	Revenues	Actual Losses
\$	\$	\$	\$
1987	5,484,251	4,104,651	1,379,600
1988	5,024,132	3,893,249	1,130,883
1989	4,560,676	3,401,449	1,159,227

In performing its duties under paragraph 163(1)(c) of the NTA, 1987, the Agency hereby causes public notice of the final determination of the actual losses incurred by CP in the operation of the branch line and of the principal factors applied in making that determination. A breakdown of these costs, into the four cost categories, is attached as Appendix B.

### **ECONOMIC DETERMINATIONS**

Section 164 of the NTA, 1987 requires the Agency to determine if the operation of the branch line is economic or uneconomic, and, if uneconomic, whether there is a reasonable probability of the operation of the branch line becoming economic in the foreseeable future. Should the Agency find that the operation of a branch line is uneconomic and that there is no reasonable probability of its becoming economic in the foreseeable future, subsection 165(1) of the NTA, 1987 requires the Agency to order its abandonment. If the Agency determines that there is a reasonable probability of its becoming economic in the foreseeable future, the Agency still must order the abandonment of the operation of a branch line unless it determines that the line is required in the public interest as set out in section 166 and as further defined in section 167 of the NTA, 1987.

At the Agency's hearing in 1988, the major shippers on the line, the Grand Forks Shippers, indicated that a potential total of 3,250 carloads in 1989 and 1990 would be offered to CP as the primary line-haul carrier on the basis of rate quotations and existing service levels. On the basis of this evidence the Agency determined that there was a reasonable probability of the branch line becoming economic within two years.

Since that time, the number of carloads offered to CP as the primary line-haul carrier has declined substantially from 1,671 in 1988 to 979 in 1989. From the evidence presented by the Grand Forks Shippers, it is evident that the 1990 level of line-haul traffic offered to CP will be substantially less again as BN continues to offer line-haul freight rates to and from U.S. and Canadian destinations at favourable rates. As a result, CP's present service in Grand Forks consists almost totally of interswitching cars between the Grand Forks Shippers and BN, via the Grand Forks Segment, at a rate per carload established annually under the NTA, 1987.

The Grand Forks Shippers' evidence suggests that, unless CP can offer freight rates that are competitive to those of BN, the majority of their traffic would continue to be offered to BN as the primary line-haul carrier with CP providing interswitching service from the shippers' facilities to the interchange with BN in Grand Forks for the foreseeable future.

The Province and the Coalition contend that if the proposed expansion of the Celgar Pulp Company (hereinafter Celgar) is approved by the provincial Major Project Review Process (hereinafter MPRP) which was initiated in conjunction with the federally-mandated Environmental Assessment Review Process, the increased demand for wood chips from the area of Grand Forks and Midway would be equivalent to several thousands of rail carloads per year. It is noted, however, that the estimated volume of wood chip traffic varies greatly from the Province's projection of the equivalent of 3,600 carloads to the Coalition's projection of 9,000 carloads.

The probability of attaining even the lower estimate of 3,600 carloads of wood chips as traffic on the branch line in the foreseeable future, that is, the next three years, is considered uncertain. The report of the MPRP review panel is only due by the end of September 1990, and the Agency's statutory deadline for rendering a decision on its reconsideration of CP's application is before the end of September. In addition, the provincial timetable for considering the MPRP review panel's recommendations is unknown and it may be weeks or months before the fate of Celgar's expansion plans is decided. Furthermore, none of the evidence presented gives any assurance in terms of proposed contractual agreements or otherwise that any potential future movement of wood chips as a result of an expansion of the Celgar plant would be handled by CP if the line were not abandoned.

In view of the foregoing, the Agency determines that the branch line is uneconomic and that there is no reasonable probability of the branch line becoming economic in the foreseeable future.

However, the Agency recognizes the considerable amount of carloads generated by the Grand Forks Shippers and the use of the Grand Forks Segment in providing interswitching service from these shippers to BN. Pursuant to the provisions of section 164 of the NTA, 1987, the Agency has considered the present and future economic prospects of the operation of the Grand Forks Segment.

The Agency is satisfied that the operation of the Grand Forks Segment, as it is presently operated by CP in conjunction with the rest of the branch line, is presently uneconomic.

At the Agency's request, CP provided supplementary information concerning the estimated costs and revenues of operating the Grand Forks Segment, separate from the rest of the branch line, for interswitching purposes only. CP's submission indicated that, based on 1989 rates and costs and the shippers' estimated number of carloads which would require interswitching to BN, a profit would be realized from such an operation.

CP's submission challenged the Grand Forks Shippers' carload projection for 1990 and 1991 as being optimistically high. CP's traffic projection, based on the results of the shippers' previous traffic projections and the current year traffic levels, as of the end of July, indicated that it was questionable if the shippers would provide sufficient traffic in order for CP to break even on an interswitching operation on the Grand Forks Segment.

The Agency's analysis of the information before it concerning this matter suggests that the shippers' traffic projection may be optimistically high and that CP's estimated profit level may be pessimistically low. Whether the shippers will attain their projected traffic levels for 1990 is uncertain as there is no specific information on file indicating that the number of carloads to be shipped during the last five months of 1990 will equal the number shipped during the previous seven months. On the other hand, the Agency concludes that in both the making of assumptions within the context set out in the Agency's directive to CP and the estimation of costs and revenues, CP may have taken a conservative position which may have had the effect of

maximizing costs regarding the operation of the Grand Forks Segment. Nevertheless, CP estimated a profitable operation.

In view of the foregoing, the Agency determines that there is a reasonable probability of the operation of the Grand Forks Segment, separated from the rest of the branch line for the purpose of interswitching the Grand Forks Shippers' traffic to BN, becoming economic in the foreseeable future.

### **PUBLIC INTEREST INTERVENTIONS**

The Agency received twenty-nine (29) interventions in opposition to CP's application on grounds that abandonment of the branch line would not be in the public interest. The major concerns expressed in virtually all of the interventions were related to the impact that abandonment would have on the environment and on highway safety as a result of the anticipated increase in transport truck traffic in the area to an expanded Celgar pulp mill.

The Province was particularly concerned with the above matters as highway construction, maintenance and safety and to a degree environmental protection issues which fall under provincial jurisdiction.

The Grand Forks Shippers expressed their concerns regarding the lack of suitable alternative transportation to their facilities if the rail line were abandoned. They contended that the absence of rail service to their doors would restrict plant productivity, limit their market potential and possibly result in reduced or lost employment income in the area which would have related economic spin-off effects. In particular, Canpar Industries Ltd. indicated that abandonment of rail service to its plant could result in the closure of the plant and the loss of 150 jobs in the Grand Forks area.

Inasmuch as the Agency has determined that, with the exception of the Grand Forks Segment, the operation of the branch line is uneconomic and there is no reasonable probability of its becoming economic in the foreseeable future, section 165 of the NTA, 1987 precludes Agency consideration of public interest issues in respect of these portions of the branch line.

The Agency finds that the impact of abandonment of the Grand Forks Segment on the Grand Forks area economy could be significant in terms of reduced or lost employment income and negative related economic spin-off effects. Therefore, the Agency determines that the operation of the Grand Forks Segment is required in the public interest.

### **CONCLUSIONS**

Pursuant to section 164 of the NTA, 1987 the Agency may make a separate economic determination of a segment of a branch line apart from the rest of the branch line. In opposing the Grand Forks Shippers' Notice of Motion requesting the Agency to order the segmentation of the Grand Forks Segment from the rest of the branch line, CP submitted that the Agency is without jurisdiction to order segmentation as the isolated segment would no longer be considered a branch line or a segment thereof. Further, CP contended that the isolation of the segmented trackage would not be consistent with the principles of the RTC's "Main Line/Branch Line Decision" dated January 22, 1979. The Grand Forks Shippers submitted that the Agency has jurisdiction in this matter and that the wording of the NTA, 1987 places no restrictions on the Agency in this regard. The Agency has considered these arguments and concurs with those submitted by the Grand Forks Shippers. Therefore, the Agency finds that it has jurisdiction to order the segmentation of a branch line.

Thus, pursuant to sections 164 and 165 of the NTA, 1987, the Agency determines that the operation of the branch line from Robson West (mileage 30.7) to a point near Grand Forks (mileage 92.6) and from Grand Forks (mileage 93.85) to Midway (mileage 126.6), including the Carmi Spur, is uneconomic and that there is no reasonable probability of the operation of these

portions of the branch line becoming economic in the foreseeable future and that the operation thereof shall be abandoned.

Section 168 of the NTA, 1987 provides that the Agency shall fix an abandonment date not less than thirty (30) days or more than one (1) year from the date of the abandonment order. In view of the Province's interest in preserving the Boundary Subdivision as the preferred method of transporting wood chips to Celgar if its expansion plans are approved, the Province may wish to consider the provisions of paragraph 172(2)(b) of the NTA, 1987 as a means of protecting this rail line for possible future use. In order to allow the Province sufficient time to consider this matter, the Agency fixes the abandonment date of the Boundary Subdivision from Robson West (mileage 30.7) to a point near Grand Forks (mileage 92.6) and from Grand Forks (mileage 93.85) to Midway (mileage 126.6), including the Carmi Spur, ninety (90) days from the date of the Order effecting this Decision.

Insofar as the Grand Forks Segment (from mile 92.6 to mile 93.85 including the Carson Spur) is concerned, pursuant to sections 164, 166 and 167 of the NTA, 1987 the Agency determines that although this portion of the line is uneconomic there is a reasonable probability of its becoming economic in the foreseeable future and that its operation is required in the public interest because it is considered necessary in this case in order to protect the viability of several industries and hence the economy of the community in which they are located. Further, BN has indicated to the Agency that it will grant CP running rights at the normal tariff rates on those occasions when CP must access the Grand Forks Segment by rail.

Notwithstanding that it has been determined that there is a reasonable probability of the Grand Forks Segment becoming economic in the foreseeable future and that the operation of the segment is required in the public interest, the Agency recognizes that the long term operation of the segment by CP may not be the optimum solution in this case. Therefore, the Agency recommends that CP, the Grand Forks Shippers and BN attempt to reach a mutually agreeable alternative to the existing situation by the end of 1991. Thus, it is the Agency's intention to reconsider CP's application as it pertains to the Grand Forks Segment after January 1, 1992, unless before that time the parties have reached an agreement between themselves and advised the Agency accordingly.

## **ORDER**

**WHEREAS** the Notice of Reconsideration was issued by the Agency on March 22, 1990;

**AND WHEREAS** opposition to the proposed abandonment of the operation of the branch line was received by the Agency within the period set in section 161 of the NTA, 1987;

**AND WHEREAS** the Agency determined that a public hearing was not required in its consideration of this application;

**AND WHEREAS** the Agency has reviewed all the submissions and documentation on file, and in compliance with the Decision of the Agency,

## **THE AGENCY HEREBY:**

1. Determines that the amount of actual loss incurred in the operation of the branch line for the prescribed financial years of 1987, 1988 and 1989 are as shown in the Decision of the Agency.
2. Determines that operation of the segments of the branch line from Robson West (mileage 30.7) to a point near Grand Forks (mileage 92.6) and from Grand Forks (mileage 93.85) to Midway (mileage 126.6) including the Carmi Spur, are uneconomic and that there is no reasonable probability of these segments of the branch line becoming economic in the foreseeable future.

3. Determines that the operation of the segment of the branch line in Grand Forks from mileage 92.6 to mileage 93.85 including the Carson Spur (the Grand Forks Segment) is uneconomic, that there is a reasonable probability of this segment of the branch line becoming economic in the foreseeable future, and that this segment of the branch line is required in the public interest.

**NOW THEREFORE, THE AGENCY HEREBY ORDERS THAT:**

1. The operation of the segments of the branch line from Robson West to Grand Forks and from Grand Forks to Midway be abandoned ninety (90) days from the date of this Order.
2. The operation of the Grand Forks Segment, between mileage 92.6 and mileage 93.85 of the branch line, including the Carson Spur, not be abandoned.
3. The application in respect of the Grand Forks Segment shall be reconsidered in accordance with section 171 of the NTA, 1987 after January 1, 1992 unless new circumstances arise which warrant an earlier reconsideration.

**THE AGENCY HEREBY REQUESTS THAT:**

CP advise the Agency in writing of the dates upon which:

- i) the operation of the segment of the Boundary Subdivision from mileage 30.7 to mileage 92.6 and from mileage 93.85 to mileage 126.6 including the Carmi Spur have been abandoned, and
- ii) the trackage and other facilities were removed.