

30514

SERVICE DATE - SEPTEMBER 28, 1999

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-520]

Salt Lake City Railroad Company, Inc.–Adverse Abandonment–Line of Utah Transit Authority in Salt Lake City, Ut

On September 8, 1999, Utah Transit Authority (UTA) filed an adverse application¹ under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) find that the public convenience and necessity require or permit the abandonment by the Salt Lake City Southern Railroad Company, Inc. (SLCS), of a rail line from milepost 798.74 at Ninth South Street in Salt Lake City to the milepost 775.19 at the Salt Lake County/Utah County boundary line near Mount (including the 1.4-mile Lovendahl Spur connecting with the main line at milepost 790.52), a total distance of approximately 24.95 miles in Salt Lake County, UT. The line traverses United States Postal Service ZIP Codes 84101, 84115, 84107, 84047, 84070, 84092 and 84020, and includes the stations of Salt Lake City, Murray, Sandy, Draper and Mount, UT.

UTA states that it is filing the adverse application to remove the Board's jurisdiction over SLCS's common carrier operations and obligations. UTA says that it wants to replace SLCS with the Utah Railway Company (URC) as the operator of its line. URC has filed a notice of exemption to acquire and operate the line in Utah Railway Company–Acquisition

¹ An abandonment of a railroad's service sought by a party other than the railroad is called an "adverse" abandonment.

and Operation Exemption—Lines of Utah Transit Authority in Salt Lake City, UT, STB Finance Docket No. 33785 (STB served Aug. 30, 1999) (64 FR 47229).

UTA, a noncarrier, acquired the underlying right-of-way and track from the Union Pacific Railroad Company. See Utah Transit Authority—Acquisition Exemption—Line of Union Pacific Railroad Company, Finance Docket No. 32186 (ICC served Dec. 31, 1992). UTA is apparently using the line for light rail passenger service. SLCS is operating freight service on the line under a permanent easement. See Salt Lake City Southern Railroad Company, Inc—Acquisition and Operation Exemption—Line Between Mount and Salt Lake City, UT, Finance Docket No. 32276 (ICC served Apr. 23, 1993).

In a decision served in this proceeding on August 26, 1999, UTA was granted a waiver of some of the filing requirements of 49 CFR 1152 that were not relevant to its intended adverse abandonment application. However, UTA was required to provide information about the physical condition of the line.

The August 26 decision also noted that the continued viability of freight service would be a relevant issue in this abandonment proceeding. It was also indicated that the Board would be concerned if the common carrier obligation for continued freight service would be impeded by light rail passenger service or by any restrictions or limitations UTA has allegedly placed on freight operations. As a result, UTA was required to provide information in its application about how its light rail service affects freight service to shippers.

UTA was also granted a waiver of the environmental regulations in 49 CFR 1105.6(c)(6) and 1105.8(b)(3) because freight operation would be continued on the line by

URC. The decision noted that, even though the proceeding is an abandonment of the line because SLCS holds a permanent easement to operate the line, environmental and historic reporting requirements would indeed be unnecessary for the adverse abandonment application if rail service will be continued by another operator.

In an application by a third party for a determination that the public convenience and necessity permit a line to be discontinued or abandoned, the issue before the Board is whether the public interest requires that the line in question be retained as part of the national rail system. By granting a third party application, the Board withdraws its primary jurisdiction over the line. Questions of the disposition of the line, including the adjudication of various claims of ownership or other rights and obligations, are left to the state or local authorities. Kansas City Pub. Ser. Frgt. Operation--Exempt--Aban., 7 I.C.C.2d 216, 224-25 (1990).

UTA has served notice of its application on shippers served by the line. Shippers can individually submit protests or comments on the proposal that will be considered by the Board in ruling on the merits of the adverse abandonment application.

There is no indication that the line contains any federally granted right-of-way. Any documentation in the UTA's possession will be made available promptly to those requesting it. UTA's entire case for adverse abandonment was filed with the application.

The interest of affected railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed adverse abandonment or protests (including the protestant's entire opposition case), by October 25,

1999. Because this adverse abandonment is the functional equivalent of a discontinuance of trackage rights where rail service would be continued by another operator, trail use/rail banking, and public use requests are not appropriate, and the public interest does not require the consideration of offers of financial assistance. Likewise, no environmental or historical documents are required here.

Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest by October 25, 1999. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments by October 25, 1999. Parties seeking information concerning the filing of protests should refer to section 1152.25. The due date for UTA's reply is November 8, 1999.

All filings in response to this notice must refer to STB Docket No. AB-520 and must be sent to (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001 and (2) Kevin M. Sheys, Oppenheimer, Wolff, Donnelly & Bayh, LLP, 1350 I Street, N.W., Suite 200, Washington, DC 20005-3324. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full

abandonment regulations at 49 CFR part 1152.

Decided: September 16, 1999.

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

Vernon A Williams

Secretary