

SERVICE DATE – MAY 4, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 272X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN KOOTENAI COUNTY, ID

Decided: April 28, 2009

By petition filed on January 14, 2009, Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a portion of its Coeur d'Alene Industrial Lead between milepost 7.5 near Gibbs, and the end of the line at milepost 8.79 near Coeur d'Alene, a distance of 1.29 miles in Kootenai County, ID. Notice of the filing was served and published in the Federal Register on February 3, 2009 (74 FR 5969-70). We will grant the exemption, subject to environmental and standard employee protective conditions and to a consummation condition.

BACKGROUND

According to UP, no customers currently use the line for local or overhead traffic, nor is there any likelihood of new rail-served customers locating on the line. UP states that only one customer, Stimson Lumber Company (Stimson), has moved traffic over the line within the past two years, and that Stimson's last shipment moved in May 2008 when it ceased mill operations. UP states that the mill is being dismantled and that the property will be converted to other, non-industrial uses.<sup>1</sup> In a letter appended to UP's petition, a representative of Stimson indicates that Stimson has no objection to the proposed abandonment.

UP states there are no reasonable alternatives to abandonment, as there is no likelihood that a new industry requiring significant rail service would locate on the line. Moreover, UP states that it is unaware of any other locations along the line suitable for establishment of rail-served industries, as the area is changing from an industrial orientation toward commercial, residential, and educational uses.<sup>2</sup> According to UP, the abandonment will be beneficial to

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<sup>1</sup> UP states that it was informed by Stimson's chief executive officer that Stimson has entered into a contract to sell the property associated with the mill to North Idaho College which will use the property to expand the college's nearby campus.

<sup>2</sup> UP states that it has received inquiries from Mr. Peter Cooper of Hayden, ID, regarding the possibility of a barge-to-rail transload facility for logs at an unspecified location along the line. According to Mr. Cooper, the facility would transfer logs received via barge on the

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interstate commerce, as it will allow it to redirect resources away from an unused line that has no likelihood of generating future business toward rail service on actively used rail lines.

UP further states that the abandonment will not adversely impact transportation options in the area, as the area will continue to be served by BNSF Railway Company (BNSF), which operates its own rail line adjacent to the line proposed for abandonment. UP notes that the area is also served by numerous major city streets and highways, including Interstate 90, which runs east/west through the area, and U.S. Highway 95, a north/south route. Additionally, UP states that it will continue to offer rail service at its Feeley Spur station, located several miles northwest of Coeur d'Alene.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Here, detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will expedite regulatory action and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption will also foster sound economic conditions and encourage efficient rail management by relieving UP of the costs of maintaining and operating a line that is no longer used and by allowing UP to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. There are no shippers on the line and the only customer that moved traffic over the line in recent years has ceased operations and has indicated it does not object to the abandonment. Nevertheless, to ensure that Stimson is informed of our action, we will require UP to serve a copy of this decision on Stimson within 5 days of the service date of this decision and certify to us that it has done so. In light of the market power finding, we need not determine whether the proposed abandonment is limited in scope.

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( . . . continued)

Spokane River to rail for movement to a UP-served lumber mill in Chilco, ID. UP states that, to its knowledge, Mr. Cooper has not acquired any property along the line for such a facility and has no prospect of doing so. Further, UP asserts that Mr. Cooper's proposal is not feasible because the UP-served lumber mill at Chilco cannot handle the types and quantities of rail traffic that Mr. Cooper projects.

UP has submitted an environmental and historic report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) on March 13, 2009. In the EA, SEA states that by letter dated July 18, 2008, Mr. Daniel Redline, Regional Administrator, Idaho Department of Environmental Quality (ID-DEQ), stated that, in addition to forest products, UP also transported petroleum products to heating oil distributors and an asphalt plant. ID-DEQ further noted that UP likely used herbicides to control vegetation and that both the petroleum products and herbicides are potential contaminants that could be present on the line. ID-DEQ therefore requested that UP conduct a reconnaissance assessment of the rail bed and adjacent right-of-way, and that the assessment inventory any areas with discolored soils or soils that are devoid of vegetation for no apparent reason. ID-DEQ added that any of these potentially contaminated areas should be mapped and should undergo soil testing using a defensible sampling design to establish the nature, extent, and maximum concentration values of any contamination; and that the type of contamination suspected at any particular site should dictate the constituents sampled and assessed.

Further, ID-DEQ noted that since the line is located near the Spokane River, any abandonment activities should apply best management practices designed to protect the river from non-point source pollution. Also, ID-DEQ stated that any area used for temporary storage and/or treatment of salvaged materials should be situated away from the river, should be fenced to restrict public access, and should comply with the Idaho Groundwater Protection requirements, as the line is situated over the Rathdrum Prairie-Spokane Valley Aquifer, a sole drinking water source for the region. Therefore, SEA recommends a condition requiring UP, prior to commencement of any salvage activities, to (1) consult with ID-DEQ (Kreg Beck, 208-769-1422), to ensure that any concerns regarding potential contamination of the right-of-way are addressed, and (2) report the results of the consultations in writing to SEA prior to the onset of salvage operations.

SEA further states that the U.S. Department of Commerce, National Geodetic Survey (NGS) has indicated that one geodetic station marker may be located in the area proposed for abandonment. Therefore, SEA recommends a condition requiring UP to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the station marker.

Finally, SEA states that UP served a copy of the historic report on the Idaho Historical Society (SHPO). SEA states that it has not heard from the SHPO and, therefore, has not been able to consider the SHPO's opinion before determining whether the line may be eligible for listing in the National Register of Historic Places. Therefore, SEA recommends a condition requiring UP to retain its interest in, and take no steps to alter, the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places

until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. The condition would also require UP to report to SEA regarding any consultations with the SHPO and the public, and would prohibit UP from filing its consummation notice or initiating any salvage activities (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed the condition.<sup>3</sup>

No comments to the EA were filed by the April 13, 2009 due date. Accordingly, we will impose SEA's recommended conditions. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources. Although SEA indicated in the EA that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and therefore none will be imposed.<sup>4</sup>

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

Finally, UP notes in its petition that BNSF holds trackage rights authority over the line proposed for abandonment. See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34436 (STB served Dec. 2, 2003). On February 12, 2009, BNSF filed a petition for exemption to discontinue its trackage rights in STB Docket No. AB-6 (Sub-No. 466X), BNSF Railway Company—Discontinuance of Trackage Rights Exemption—in Kootenai County, ID. Notice of the exemption was served and published in the Federal Register on March 4, 2009 (74 FR 9476), and a final decision approving the discontinuance is scheduled to be issued by June 2, 2009. Accordingly, we will impose a condition that UP may not exercise the abandonment authority granted here until BNSF obtains approval to discontinue its trackage rights on the line.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 10903 the abandonment by UP of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and the conditions that UP: (1) prior to commencement of any salvage activities, consult

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<sup>3</sup> SEA states in the EA that it conducted a search of the Native American Consultation Database to identify Federally recognized tribes that may have ancestral connections to the project area. The database identified the Coeur d'Alene Tribe of the Coeur d'Alene Reservation and the Kalispel Indian Community of the Kalispel Reservation. SEA states that it will ensure that each tribe will receive a copy of the EA for review and that their names will be added to the service list in this proceeding.

<sup>4</sup> Public use requests were due no later than 20 days after publication of the notice in the Federal Register, or by February 23, 2009.

with ID-DEQ to ensure that any concerns regarding potential contamination of the right-of-way are addressed and report the results of the consultations in writing to SEA prior to the onset of salvage operations; (2) notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of one station marker; (3) (a) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed, (b) report to SEA regarding any consultations with the SHPO and the public, and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed the condition; and (4) may discontinue service, but may not consummate the abandonment until after BNSF has obtained approval to discontinue its trackage rights on the line.

2. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by May 14, 2009, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

4. Provided no OFA has been received, this exemption will be effective on June 3, 2009. Petitions to stay must be filed by May 14, 2009, and petitions to reopen must be filed by May 26, 2009.

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP’s filing of a notice of consummation by May 4, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or statutory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan  
Acting Secretary