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SERVICE DATE – NOVEMBER 25, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 280X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION AND  
DISCONTINUANCE OF SERVICE–IN TARRANT COUNTY, TX

STB Docket No. AB-1038X

FORT WORTH AND DALLAS BELT RAILROAD COMPANY–DISCONTINUANCE OF  
SERVICE–IN TARRANT COUNTY, TX

STB Docket No. AB-546X

FORT WORTH AND WESTERN RAILROAD COMPANY–DISCONTINUANCE OF  
SERVICE–IN TARRANT COUNTY, TX

Decided: November 23, 2009

By petition filed on August 7, 2009, Union Pacific Railroad Company (UP), Fort Worth and Dallas Belt Railroad Company (FWDB), and Fort Worth and Western Railroad Company (FWWR) (collectively, petitioners) jointly seek an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10903 to permit: (1) UP to abandon and discontinue service over a segment of its North Fort Worth Branch line of railroad between milepost 633.02 and milepost 634.25, a distance of approximately 1.23 miles in Tarrant County, TX; (2) FWDB to discontinue operations over the subject line segment;<sup>1</sup> and (3) FWWR to discontinue overhead and local trackage rights over the subject line segment.<sup>2</sup> Petitioners state that the lease and trackage rights will remain in full force and effect for the remainder of the North Fort Worth Branch. Petitioners also seek exemption from the offer of financial assistance (OFA) provisions at 49 U.S.C. 10904 and the public use provisions at 49 U.S.C. 10905, and they seek relief from the trail use provisions at 49 CFR 1152.29. Notice of the filing was served and published in the Federal Register on August 27, 2009 (74 FR 43743). We will grant the exemption from 49 U.S.C. 10903-04, subject to standard employee protective conditions and the condition that petitioners

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<sup>1</sup> FWDB operates the line pursuant to a lease with UP. See Fort Worth and Dallas Belt Railroad–Acquisition and Operation Exemption–Certain Lines of St. Louis Southwestern Railway Company, Finance Docket No. 32514 (ICC served June 22, 1994).

<sup>2</sup> FWDB, a corporate affiliate of FWWR, granted FWWR these trackage rights. See Fort Worth & Western Railroad Company–Trackage Rights Exemption–Forth Worth and Dallas Belt Railroad Company, Finance Docket No. 32590 (ICC served Nov. 10, 1994).

continue to provide interim rail service to the line's shipper as discussed below. The requests for exemption from section 10905 and relief from our trail use regulations will be denied as moot.

## BACKGROUND

According to petitioners, the line was originally constructed in 1888 by a predecessor in interest to UP. Petitioners state that the track structure remaining on the main line consists of a single track line consisting of 75-pound second hand jointed rail laid in 1941, and 85-pound second jointed rail laid in 1952. Petitioners also state that on or about August 15, 1998, trackage owned or controlled by FWDB and/or FWWR running parallel and adjacent to the line, between milepost 633.67 and milepost 634.06 (referred to as the Residual Line), was physically connected to the line to assure continued rail service to Commercial Metals Co. (CM), the only shipper on the line. According to petitioners, this connection allowed a substitution of trackage by permitting the withdrawal of approximately 0.58 miles of the line from active service when UP and FWDB on that date entered into a supplement to their lease referenced above in note 1.

Petitioners state that the line is located on property owned in fee by UP. The right-of-way consists of a corridor that is 100 feet wide for the length of the line. Petitioners indicate that the topography of the property on which the line is located is level and that it runs through an urban industrial neighborhood north of downtown Fort Worth. Petitioners state that the sole purpose of their joint petition is to allow the proposed acquisition of the right-of-way associated with the line segment by the Tarrant Regional Water District (TRWD) for a flood control and redevelopment project in that area, commonly known as the Trinity Uptown Project.

TRWD and CM have reached an agreement for CM to relocate its operations to another rail-served location in Fort Worth. They both have filed letters in support of the proposed transaction. CM's support, however, is conditioned upon the continuation of full and uninterrupted rail service by FWDB to CM's current facility until CM completes its relocation. Petitioners state that they will not consummate their abandonment and discontinuance authority for the portion of the line needed to serve CM until the shipper has completed its relocation to its new rail-served facility. According to petitioners, FWWR will continue to provide uninterrupted rail service to CM as it currently does until the relocation of CM's operations is complete. Petitioners also request that we impose a condition to that effect.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued 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.

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 also will foster sound economic conditions and encourage

efficient management by relieving petitioners of the costs of continuing to maintain and operate the line once the line's sole shipper has relocated [49 U.S.C. 10101(5) and (9)]. 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. The only shipper, CM, does not oppose the proposed abandonment and discontinuance, and it has agreed to relocate its operations to another rail-served location in Forth Worth. Moreover, as agreed to by CM and the petitioners, we will condition the exemption on petitioners' continuing to provide rail service to CM until the shipper has completed its relocation to its new rail-served facility and on not consummating their abandonment and discontinuance authority for the portion of the line needed to serve CM during that time. And to ensure that CM is informed of our action, we will require petitioners to serve a copy of this decision on CM within 5 days of this decision and to certify to the Board that they have done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

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).

Petitioners have submitted a combined environmental and historic report with their petition and have notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and issued an Environmental Assessment (EA) for public review and comment. The EA was served on October 9, 2009. Comments to the EA were due by November 9, 2009. No comments were received.

In the EA, SEA recommended that no environmental conditions be placed on any decision granting abandonment authority. Accordingly, no environmental condition will be imposed.

We conclude that the proposed abandonment and discontinuance, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As previously noted, petitioners have requested that the abandonment and discontinuance be exempted from the OFA provisions of 49 U.S.C. 10904. We have granted exemptions from these provisions from time to time, when the right-of-way is needed for a valid public purpose

and there is no overriding public need for continued rail service.<sup>3</sup> Here, petitioners have established a valid public purpose of permitting the unencumbered transfer of ownership of the right-of-way associated with the line to TRWD for a public flood control and redevelopment project in the north downtown area of Forth Worth, TX, constituting the Trinity Uptown Project. In particular, the Trinity Uptown Project includes important public improvements consisting of constructing a bypass channel parallel to FWDB's main line track, requiring the purchase by TRWD of the approximately 12-acre parcel of land between milepost 633.05 and milepost 634.00, which will allow the removal of aging and inadequate levees and provide efficient flood protection in the future. The only shipper on the line has agreed to relocate to another rail-served facility and will continue to receive rail service in the interim. And no one has objected to granting this request in response to the notice about it in the Federal Register. Accordingly, we will exempt the proposed abandonment and discontinuance from the OFA requirements of 49 U.S.C. 10904.

The evidence of record establishes that the proposed exemption from 49 U.S.C. 10904 meets the criteria of 49 U.S.C. 10502. Applying OFA provisions in this instance is not necessary to carry out the rail transportation policy. Allowing the abandonment exemption to become effective expeditiously, without first being subject to these provisions, will minimize the need for Federal regulatory control over the rail transportation system, expedite the regulatory decision, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. And it has already been determined that regulation is not necessary to protect shippers from an abuse of market power.

Petitioners also have requested an exemption from the public use requirements of 49 U.S.C. 10905, and they have requested relief from the trail use provisions at 49 CFR 1152.29. Requests for a public use condition or for trail use/rail banking were due by September 16, 2009, and none have been filed. Therefore, these requests will be denied as moot.

Petitioners ask, in essence, that we make this decision effective on its date of service. Petitioners, however, fail to explain why such expedited relief is warranted here. Thus, we will make our decision effective following the normal 30-days' notice.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 10903-04 the abandonment of, and discontinuance of service over, the above-described line by UP, and the discontinuance of service over the above-described line by FWDB and FWRW, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and the condition that petitioners continue to

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<sup>3</sup> See, e.g., Norfolk Southern Railway Company—Abandonment Exemption—In Washington County, NC, STB Docket No. AB-290 (Sub-No. 248X) (STB served July 26, 2004), and cases cited therein.

provide rail service to CM until the shipper has completed its relocation to its new rail-served facility and that petitioners not consummate their abandonment and discontinuance authority for the portion of the line needed to serve CM during that time.

2. Petitioners are directed to serve a copy of this decision on CM within 5 days of the service date of this decision and to certify to the Board that they have done so.

3. Petitioners' requests for an exemption from the provisions of 49 U.S.C. 10905 and for relief from 49 CFR 1152.29 are denied as moot.

4. The exemption will be effective on December 25, 2009. Petitions to stay must be filed by December 10, 2009, and petitions to reopen must be filed by December 21, 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 November 25, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory 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, Chairman Elliot, Vice Chairman Nottingham, and Commissioner Mulvey.