

SERVICE DATE - APRIL 1, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34631

UNION PACIFIC RAILROAD COMPANY—ACQUISITION AND OPERATION  
EXEMPTION—LINE OF DENVER TERMINAL RAILROAD COMPANY, D/B/A DENVER  
ROCK ISLAND RAILROAD

Decided: March 24, 2005

By petition filed on January 7, 2005, Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to acquire and operate approximately 3.23 miles of rail line of the Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad (DRIR), extending from DRIR milepost 0.72 near Sandown to DRIR milepost 3.95 at Belt Junction, in Denver, CO. We will grant the exemption, subject to standard labor protective conditions.

BACKGROUND

UP and DRIR have agreed to an exchange of rail lines in Denver, CO. Under the exchange agreement, UP will acquire the Sandown-Belt Junction line from DRIR (the UP Acquisition). In turn, DRIR will acquire the lines known as the Stock Yard Lead and North Washington Industrial Park Lead from UP (the DRIR Acquisition).<sup>1</sup> Pending completion of the exchange transaction, DRIR will lease the Stock Yard Lead from UP.<sup>2</sup> The exemption sought by UP in this proceeding covers only the UP Acquisition.

The line at issue was formerly a Chicago, Rock Island and Pacific Railroad Company (CRI&P) through route between UP's Kansas Pacific (KP) line at Sandown Junction (over which CRI&P had trackage rights) and Belt Junction. Currently, DRIR uses the line to provide service to on-line shippers, and will continue to do so under the terms of the exchange agreement through DRIR's retention of local trackage rights to serve these shippers.

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<sup>1</sup> DRIR will file for an exemption of the DRIR Acquisition in a separate proceeding.

<sup>2</sup> DRIR was granted an exemption for the lease and operation in Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad—Lease and Operation Exemption—Rail Line of Union Pacific Railroad Company, STB Finance Docket No. 34637 (STB served Jan. 12, 2005).

UP states that the acquisition will provide it with a potential alternate route for trains operating between its KP line and routes running west and north from Belt Junction. UP's existing routing between these points operates through Pullman in central Denver, near Union Station. According to UP, the Denver Regional Transportation District and Colorado Department of Transportation are considering the KP corridor for a commuter rail line between Union Station and Denver International Airport as part of the FasTracks program designed to improve public transit in the Denver area. If the KP corridor is used for a commuter rail line, through freight traffic may be rerouted to the line between a connection near Sandown and Belt Junction. UP states that, although this rerouting may not take place for several years, it wants to acquire the line and have the line available if needed.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to acquire and operate the property of another rail carrier. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when we find that: (1) 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 needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323-25 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy are not adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. According to UP, the UP Acquisition will have no anticompetitive effects. Neither DRIR nor UP is giving up any rights to compete against each other, or against other carriers. Under its retained trackage rights, DRIR will continue to serve shippers on the line in the same manner as it does at present. UP is gaining the potential to use the line for through freight service which, if it occurs, would enhance UP's ability to provide competitive service in the Denver area. Nevertheless, to ensure that the shippers are informed of our action, we will require UP to serve a copy of this decision on all shippers on the line within 5 days of the service date of this decision and to certify to us that it has 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 employees. Accordingly, as a condition to granting this exemption, we will impose the standard employee protective conditions established in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

The acquisition is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any operational changes. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because further Board approval will be required to abandon any service and there are no plans to alter or dispose of any properties subject to Board jurisdiction that are 50 years old or older.

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, we exempt from the prior approval requirements of 49 U.S.C. 11323-25 the acquisition by UP of the above-described line, subject to the employee protective conditions in New York Dock Ry.–Control–Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

2. UP is directed to serve a copy of this decision on all shippers on the line within 5 days after the service date of this decision and to certify to us that it has done so.

3. Notice of the exemption will be published in the Federal Register on April 1, 2005.

4. This decision will be effective on May 1, 2005. Petitions to stay must be filed by April 18, 2005. Petitions to reopen must be filed by April 26, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary