

SERVICE DATE – APRIL 13, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 229X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN ELLIS
COUNTY, TX

Decided: April 12, 2006

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 4.57-mile line of railroad known as the Waxahachie Industrial Lead extending from milepost 798.03, near Waxahachie, to milepost 802.60, near Nena, in Ellis County, TX. Notice of the exemption was served and published in the Federal Register on December 7, 2005 (70 FR 72876). The exemption was scheduled to become effective on January 6, 2006.¹ By decision and notice of interim trail use or abandonment (NITU), served on February 1, 2006, the proceeding was reopened and a 180-day period was authorized for the City of Waxahachie, Texas (the City) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way in this proceeding. The negotiating period under the NITU is scheduled to expire on July 31, 2006.

The Board’s Section of Environment Analysis served an environmental assessment on December 12, 2005, which indicated that the right-of-way may be appropriate for other public use following abandonment. By petition filed on March 17, 2006, the Texas Department of Transportation (TXDOT) late-filed a request for authorization to replace the City in negotiating an agreement with UP for the subject rail line, for the remaining time left within the 180-day period, pursuant to 49 U.S.C. 10905 and 49 CFR 1152.28,² and for the issuance of a public use condition.³ TXDOT states that it intends to preserve the entire 4.57-mile right-of-way for the purpose of restoring future rail service or expanding the existing highway system. Because of

¹ By decision served on January 5, 2006, the proceeding was reopened and the exemption was made subject to three environmental conditions, which remain in effect.

² Under 49 U.S.C. 10905 and 49 CFR 1152.28(b), the Board cannot impose a public use condition beyond the 180-day period after the effective date of the decision approving or exempting the abandonment. The 180-day period for any public use condition imposed in this proceeding thus ends on July 5, 2006, and cannot be extended.

³ Because the City had been granted only a right to negotiate with UP for interim trail use, and TXDOT has not filed an NITU request, TXDOT cannot be granted authority to replace the City with respect to trail use negotiations. However, TXDOT’s request for a public use condition will be considered.

the potential for future rail use, TXDOT requests that UP be required to leave the line intact and preserve the rail corridor.

The December 7, 2005 notice of exemption provided that requests for public use conditions under 49 CFR 1152.28 would be due no later than December 27, 2005. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that TXDOT's late-filed request for a public use condition will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

To justify a public use condition, a party must set forth: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because TXDOT has met these requirements, a public use condition will be imposed under 49 CFR 1152.28. UP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. A public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes. Therefore, with respect to the public use condition, UP is not required to deal exclusively with TXDOT, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The late-filed request for a public use condition under 49 U.S.C. 10905 is accepted.
3. Upon reconsideration, the notice served and published in the Federal Register on December 7, 2006, exempting the abandonment of the line described above is subject to the condition that UP shall leave intact all of the right-of-way for the remainder of the 180-day period from January 6, 2006, until July 5, 2006, to enable any state or local government agency, or any other interested persons to negotiate the acquisition of the line for public use.

4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary