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SERVICE DATE - OCTOBER 18, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 138X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN ADAMS COUNTY, CO

Decided: October 14, 1999

By petition filed June 30, 1999, 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 line of railroad known as the Boulder Branch, from Engineering Station 8+00 to the end of the line at Engineering Station 32+21, a distance of 2,421 feet, at Brighton, Adams County, CO. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (64 FR 38942) on July 20, 1999, instituting an exemption proceeding. The United Transportation Union requests imposition of labor protective conditions. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

According to petitioner, the line is part of a short, stub-ended branch line extending off its north-south main line, located between Denver and Greeley, CO. UP states that the line is located at Brighton and crosses Main Street and U.S. Highway 85, a multi-lane major highway. According to UP, service has been provided on the line on an as-needed basis. UP claims that the sole shipper, Kuner Empson (KE), which is located at the end of the line, used the line in 1997 and until April in 1998. UP avers that shipper's traffic, primarily food products, consisted of eight carloads in 1997 and four carloads in 1998. UP states that no shipments have moved over the line since April 1998, and that no train trips are anticipated in the future because there have been no shipments on the line for more than a year.¹ Petitioner avers that alternative transportation service is available over a well-developed street and highway network in the area, which will permit alternate truck transportation for the shipper. UP adds that its main line is a short distance away.

UP witness Hans Matthiessen submitted information regarding the financial results of UP's operation over the line. Mr. Matthiessen states that total revenues for the base year (1/98 to 12/99) are \$8,915, total expenses are \$23,136,² and total avoidable gains/losses from operation of the line, excluding return on value for road property, are losses of \$14,221. Mr. Matthiessen further states

¹ UP states that the line handled no shipments for eight consecutive months and, in December 1998, it canceled the industry track contract to KE's facility due to the inactivity.

² Expenses for long term annual normalized maintenance are \$14,263.

that, if the opportunity cost were calculated, the losses incurred would be even greater, and that continued operation of the line would result in a substantial financial drain on UP.

UP argues that the proposed abandonment is justified in that: (1) there has been no traffic over the line for more than a year; (2) revenue generated is insufficient to justify the costs of operation and to cover maintenance expenses of the line, including two road crossings that are equipped with flashing signal lights; and (3) there is no reasonable prospect that traffic and revenue will increase sufficiently in the foreseeable future to justify continued operation and expenditures for maintenance of the signalized road crossings.

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.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving UP of the costs of owning and maintaining the line and allowing it to apply its assets more productively elsewhere on its system. [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power because no shipper currently uses the line. The sole former shipper on the line no longer requires rail service, has not objected to the proposed abandonment, and has adequate transportation alternatives available to it. Nevertheless, to ensure that all parties are informed of our action, we will require UP to serve a copy of this decision on KE 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 abandonment 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).

UP has submitted an environmental 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 action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental 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 August 27, 1999, recommending that no environmental conditions be imposed on the abandonment. No comments were filed in response to the EA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Although SEA has indicated that the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.³

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. 10903 the abandonment 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).

2. UP must serve a copy of this decision on Kuner Empson within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)⁴ to allow rail service to continue must be received by the railroad and the Board by October 28, 1999, 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 a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

4. 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."**

5. Provided no OFA has been received, this exemption will be effective on November 17, 1999. Petitions to stay must be filed by November 2, 1999, and petitions to reopen must be filed by November 12, 1999.

³ Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by August 9, 1999.

⁴ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

6. 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 October 18, 2000, 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 not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams
Secretary