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SERVICE DATE - JANUARY 6, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33821

UNION PACIFIC RAILROAD COMPANY--TRACKAGE RIGHTS EXEMPTION--
ELGIN, JOLIET AND EASTERN RAILROAD COMPANY

Decided: January 5, 2000

On November 30, 1999, Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights over a line of railroad of Elgin, Joliet and Eastern Railway Company (EJ&E), between Joliet, IL (milepost 1.8), and Waukegan, IL (milepost 75), a distance of approximately 76 miles. As pertinent here, the line passes through West Chicago, IL (milepost 29). Under the Board's regulations at 49 CFR 1180.4(g), the parties could have consummated the transaction on or after December 7, 1999. Notice of the exemption was served and published on December 20, 1999.

On December 3, 1999, the City of West Chicago (City) and Joseph Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), filed petitions to stay the scheduled effective date of the subject trackage rights pending UP's filing of an environmental report, an opportunity for public comments, and the Board's issuance of an environmental assessment and decision. The City's petition was motivated by a concern about possible adverse effects on public safety resulting from increased train traffic. UTU-IL expressed concern about the environmental impact and the impact on rail employees. UP replied to both petitions.

In a decision served on December 6, 1999, the Chairman applied the standards governing disposition of petitions for stay and determined that the City and UTU-IL had failed to demonstrate entitlement to a stay under the governing criteria.

On December 16, 1999, the City and UTU-IL separately filed petitions for reconsideration of the Chairman's decision. UP replied on December 27, 1999. The petitions will be denied.

DISCUSSION AND CONCLUSIONS

First, both the City and UTU-IL argue that it was inconsistent with Board regulations for the Chairman to act individually on a stay request of this type. UTU-IL also states that the Board might have improperly relied on FAX filings.

These contentions are without merit. The Board considers stay requests of the type filed here pursuant to the provisions of 49 CFR 1011.5(a)(2). Under that regulation, extensions of time for compliance with orders and procedural matters in any formal case or pending matter are referred to the Chairman for disposition. Under 49 CFR 1011.5(d), the Chairman notifies all Board members

when a petition for a stay has been referred to her for disposition under paragraph (a)(2), and the Chairman informs the Board members of her decision on the petition before it is served. If a Board member so requests, the petition is referred to the Board for decision. The procedure was followed in this case, and neither Vice Chairman Clyburn nor Commissioner Burkes requested referral to the entire Board.

There also is no merit in UTU-IL's allegation that the use of the FAX process here was somehow improper and operated "to obfuscate and delay processing of pleadings." UP's use of FAX filings subsequently followed by paper copies was fully consistent with our procedures. The record also indicates that all of the parties' pleadings were expeditiously and fully considered by the Chairman in her deliberations.

Petitioners next raise arguments based on the Board's rules at 49 CFR 1105.6(b)(4)(i), which provide that environmental assessments will normally be prepared in connection with certain consolidation transactions under 49 U.S.C. 11323 if operational changes would exceed specified thresholds established in 49 CFR 1105.7(e)(4) or (5). Petitioners argue that the Chairman materially erred in failing to consider whether the threshold of a 100% rail traffic increase would be exceeded here.

The arguments are based on a misinterpretation of the Board's rules. As the Chairman stated in her decision, pursuant to 49 CFR 1105.6(c)(4), under the Board's regulations implementing environmental laws, no environmental documentation normally is prepared in trackage rights proceedings. Petitioners base their arguments on section 1105.6(b), which does not apply to trackage rights. There is thus no error in the prior decision's failure to address whether the trackage rights operations would cross a 100% rail traffic increase threshold as that threshold is not applicable as a measure in trackage rights situations. Moreover, UP notes in reply that, because the EJ&E line averages 15 or more trains per day, rather than the 2 or 4 claimed by petitioners, the 100% increase threshold is not reached.

The Chairman's decision also noted that the Board may decide that a particular action has the potential for significant environmental impacts. In such a case, an applicant may be required to provide an environmental report, even though one is not specifically required under the regulations. 49 CFR 1105.6(d). Because the 100% increase in rail traffic threshold is not reached here, a finding that the proposed transaction has potential for significant environmental impacts under section 1105.6(d) is not warranted. The Chairman's decision already addressed the "increase of 8 trains a day" threshold (also not a required consideration in trackage rights situations, as we have here) and found that the threshold would not be reached. The Chairman's decision also explained that the City had not demonstrated that there were any grade crossings that were inadequately protected. Therefore, petitioners' arguments do not justify a finding that the proposed transaction has potential for significant environmental impacts warranting the preparation of environmental documentation.

There is no merit to the City's argument that the Board has impermissibly shifted the environmental burden of proof by stating that the City or UTU-IL can seek environmental relief by filing a petition for partial revocation of the trackage rights exemption. Because significant impacts have not been demonstrated, neither UP nor the Board has an environmental burden to shift.

Finally, UTU-IL argues that potential job losses require a stay here for consideration of employee protection greater than set forth in standard trackage rights cases. UTU-IL asserts that, in the usual trackage rights proceeding, employees of a “landlord” rail carrier are not affected. Here, petitioner asserts, UP has indicated that two existing EJ&E trains would become UP trains. Thus, UTU-IL argues, a direct loss of work for EJ&E personnel appears contemplated, and the transaction therefore should be stayed pending ascertainment of the probable job losses or displacements. UTU-IL has not presented any information that demonstrates error, material or otherwise, in the Chairman’s decision on the need for a stay. In its reply, UP maintains that UTU-IL has failed to show that the already-imposed labor protective conditions are inadequate. In the circumstances, petitioner’s concerns can be fully presented and considered in a petition for partial revocation.

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

It is ordered:

1. The petitions for reconsideration are denied.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary