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SERVICE DATE - AUGUST 6, 199

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 137X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN ADA COUNTY, ID

Decided: August 5, 1999

By notice of exemption, served and published in the Federal Register on July 8, 1999, (64 FR 36968), Union Pacific Railroad Company (UP) invoked the class exemption at 49 CFR 1152.50 to abandon an 18.2-mile line of railroad on the Boise Subdivision, “Boise Cutoff” between milepost 424.8 near Orchard and milepost 443.0 near Hillcrest, in Ada County, ID. The exemption is scheduled to become effective on August 7, 1999. On July 19, 1999, the Idaho Public Utilities Commission (IPUC) filed a petition to reject the notice of exemption or to stay the effective date of the exemption pending reopening of the proceeding to determine whether the proposed abandonment should continue to be processed as a class exemption.<sup>1</sup> UP replied to both the report of the IPUC and to the petition. The petition to reject or reopen the proceeding will be denied. As a result, IPUC’s request to stay the effective date is moot.

DISCUSSION AND CONCLUSIONS

Under rules adopted in 1983,<sup>2</sup> the abandonment of a rail line that has been out of service for at least 2 years is exempt from the prior approval requirement of what is now 49 U.S.C. 10903, subject to certain conditions and standard labor protective conditions. To qualify for the exemption, a carrier (after properly notifying appropriate agencies) need only file a notice of exemption at least 50 days before it intends to abandon a particular line, and certify that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government agency acting on its behalf) regarding cessation of service over the line either is pending with the Board or

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<sup>1</sup> IPUC states that, under Idaho law, it has a responsibility to review proposed rail abandonments in Idaho to determine: (1) whether the abandonment would adversely affect the area being served; (2) whether the abandonment would impair the access of Idaho communities to vital goods, services and markets; and (3) whether the line proposed for abandonment has potential for profitability. If IPUC makes an affirmative finds on these criteria, it is directed to transmit a report of its findings to the Board on behalf of the people of the State of Idaho. The underlying facts supporting the petition were developed during a June 23, 1999 public hearing IPUC held on the abandonment proposal and are contained in its order issued July 9, 1999.

<sup>2</sup> See Exemption of Out of Service Rail Lines, 366 I.C.C. 885 (1983).

any U.S. District Court or has been decided in favor of the complainant within the 2-year period. 49 CFR 1152.50(b). If the notice of exemption contains false or misleading information as to these factors, the carrier's use of the exemption is void ab initio and the Board will reject the notice. 49 CFR 1152.50(d)(3). Under 49 U.S.C. 10502(d), we may revoke a class exemption if we find that regulation of the abandonment under section 10903 is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. The party seeking revocation has the burden of proof and petitions to revoke must be based on reasonable, specific concerns. CSX Transp., Inc.—Aban.—In Randolph County, WV, 9 I.C.C.2d 447, 449 (1992) (CSX Transp.).

IPUC alleges that UP's certification that "no local traffic has moved over the line for at least 2 years" is false or misleading. According to IPUC, during the 2-year period UP derived revenue from local traffic movements on behalf of the Idaho Army National Guard (Guard), EnviroSafe, and Boise Locomotive Company (Boise Locomotive), and has used the line as a detour route and for storage of its own freight cars.<sup>3</sup> IPUC also alleges that abandonment of the line would have a serious adverse impact on the future economic development of Ada County because a number of Boise-area shippers are looking to relocate onto the line, and there is a good chance that Amtrak will restore rail passenger service to Boise. Thus, IPUC argues that processing the abandonment under the class exemption procedures is inappropriate in a situation such as this, where local interests have raised serious issues regarding abandonment that cannot be adequately addressed under expedited procedures. Moreover, IPUC argues that a stay would not seriously harm UP because it made a profit from the line in the past year.

Contrary to petitioner's assertions, no local traffic originated or terminated on the line during the past 2 years that would disqualify UP from using the class exemption. The Guard's traffic is not affected by the abandonment. UP states that it originally planned to begin the abandonment at milepost 423.6, the line's junction point with UP's main line at Orchard, but that the point was changed to milepost 424.8 because the Guard had used the line segment between milepost 423.55 and milepost 424.8 occasionally to load and unload military traffic. UP has attached in Appendix A of its reply a copy of a June 8, 1999 letter from the Guard stating that UP's decision to withdraw the line segment below milepost 424.8 from the proposal preserves the Guard's ability to use this segment for military purposes.

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<sup>3</sup> IPUC cites testimony from UP's witness at the IPUC hearing, Mr. Gary L. Bonner, that there was a good chance that there had been local traffic on the line. In his verified statement included in Appendix C of UP's reply, Mr. Bonner states that his testimony at the hearing was based on his definition of the term "local traffic," as traffic "coming in or out of Boise that was loaded or unloaded at Boise." Because the station of Boise is not on the line to be abandoned, Mr. Bonner clarifies that there has been no local traffic originating or terminating on the line during the last 2 years.

UP's use of the line to temporarily store cars awaiting placement at EnviroSafe's facility<sup>4</sup> or for UP's own convenience does not constitute local traffic. It is well settled that use of a rail line to store rail cars for the convenience of off-line shippers or the railroad is not traffic originating or terminating on the line within the meaning of 49 CFR 1152.50(b).<sup>5</sup>

Nor does the traffic of Boise Locomotive originate or terminate on the line. According to UP, Boise Locomotive operates a rail equipment manufacturing and repair facility located in the Hillcrest area, west of the line, and is served by the Idaho Northern & Pacific Railroad (IN&P).<sup>6</sup> UP submits that Boise Locomotive uses the line to test its equipment and that UP's only involvement is to supply an engineer to operate the locomotive, with Boise Locomotive personnel in attendance at all times.<sup>7</sup> The movement of locomotives without cars, that neither originate nor terminate traffic on the line, does not invalidate use of the class exemption procedures. See Consolidated Rail Corporation—Exemption—Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH, Docket No. AB-167 (Sub-No. 1088X), slip op. at 5 (ICC served June 14, 1989) (Conrail).

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<sup>4</sup> According to UP, EnviroSafe is not located on the Boise Subdivision, but receives loaded cars at Simco, a station on UP's Pocatello-Portland main line. UP states that, because the easternmost 1.25-mile portion of the line between milepost 423.55 and milepost 424.8 was excluded from the abandonment proposal, EnviroSafe can continue to use that segment as storage space. See Verified Statement of Raymond E. Allamong, Jr., Appendix B of UP's reply at 3.

<sup>5</sup> See Missouri Pacific Railroad Company—Abandonment—Between Natchez, MS and Vidalia, LA, Docket No. AB-3 (Sub-No. 48X) (ICC served Jan. 14, 1985); Illinois Central Railroad Company—Abandonment Exemption—in Macon County, IL, Docket No. AB-43 (Sub-No. 153X) (ICC served Feb. 21, 1991); and Missouri Pacific Railroad Company—Abandonment Exemption—in Ellis and Hill Counties, TX, Docket No. AB-3 (Sub-No. 101X) (ICC served Oct. 1, 1992).

<sup>6</sup> The Boise Subdivision is a 44-mile branch that extends from Nampa, ID, in the west, to Orchard, ID, in the east. Connections are made with the Pocatello-Portland main line at both ends. All industry sidings on the line are located west of the segment sought to be abandoned, and have been traditionally served out of the yard at Nampa. See Verified Statement of Raymond E. Allamong, Jr., Appendix B of UP's reply at 2. The segment not involved in this proceeding is currently leased by IN&P. See Idaho Northern & Pacific Railroad Company—Lease Exemption—Union Pacific Railroad Company, STB Finance Docket No. 33713 (STB served Mar. 8, 1999).

<sup>7</sup> See Verified Statement of Raymond E. Allamong, Jr., Appendix B of UP's reply at 4.

IPUC also has failed to show that regulation of this abandonment is necessary under 49 U.S.C. 10903.<sup>8</sup> Here, no shipper of overhead traffic has indicated that it would be adversely affected by the abandonment (i.e., by circuitous rerouting of traffic, traffic delays, etc.) and no objections have been filed by the Guard, EnviroSafe, or Boise Locomotive. Moreover, no evidence has been presented to show that the line segment at issue would be needed in the event that passenger service is restored to Boise in the future.<sup>9</sup> Contrary to IPUC's assertion that a number of Boise-area shippers are looking to relocate onto the line, no potential shippers have objected to the abandonment. In any event, the mere speculation about future traffic is not a sufficient basis for revoking an abandonment exemption.<sup>10</sup>

UP submits that it will incur an annual opportunity cost exceeding \$343,000 if it is unable to redeploy the track structure and the right-of-way. Although the petitioner is interested in having rail service available in the area, there is nothing on the record to suggest that the line could operate at a profit if future traffic could be developed. Requiring UP to continue incurring opportunity costs on this unused line and preventing it from dismantling the line and reusing the salvaged rail assets elsewhere in its system would be contrary to the rail transportation policy goals of fostering sound economic conditions and encouraging efficient management [49 U.S.C. 10101(5) and (9)]. Moreover, foreclosing UP from abandoning a rail line that has not been used for years would also defeat the goal of reducing regulatory barriers to exit [49 U.S.C. 10101(7)], and delaying action on the abandonment would be contrary to the policy favoring expedited decisions [49 U.S.C. 10101(2)]. Accordingly, the petition to reject or reopen and revoke the notice of exemption will be denied. As a result, the stay request is moot.<sup>11</sup>

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

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<sup>8</sup> Compare Conrail and CSX Transportation, Inc.—Abandonment Exemption—in St. Clair County, MI, Docket No. AB-55 (Sub-No. 299X) (ICC served Sept. 26, 1989), where substantial questions were raised concerning rerouting of overhead traffic and the importance of the line as a through route.

<sup>9</sup> Assertedly, the only discussions that UP has held with Amtrak concerned the possible use of the non-related portion of the Boise Cut-off between Nampa and Boise in connection with passenger service between Boise and Portland. See Verified Statement of Larry D. Smith, Appendix D of UP's reply. Amtrak has not objected to the abandonment.

<sup>10</sup> See CSX Transp., and Illinois Central Railroad Company—Abandonment Exemption—Between Varnado Switch and Bassfield, MS, Docket No. AB-43 (Sub-No. 156X) (ICC served Apr. 23, 1993).

<sup>11</sup> Requests for a notice of interim trail use and for a public use condition filed separately by Ada County and the Treasure Valley Regional Public Transportation Authority and a request for a public use condition filed by the City of Boise are being addressed in a separate decision.

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It is ordered:

1. The petition to reject or reopen and revoke the notice of exemption is denied and the petition to stay is moot.
2. This decision is effective on the date of service.

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

Vernon A. Williams  
Secretary