

21552
EB

SERVICE DATE - FEBRUARY 20, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33347

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

Decided: February 13, 1997

On January 24, 1997, Union Pacific Railroad Company (Union Pacific) filed a notice of exemption under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights over 11 miles of rail line owned by Elgin, Joliet and Eastern Railway Company (EJ&E), between milepost 25.2 near Chicago Heights, IL, and milepost 36.2 near Griffith, IN. The trackage rights became effective on January 31, 1997, and the transaction was expected to be consummated on, or as soon as possible after, that date.

On January 28, 1997, Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board (UTU), filed a petition to reject the notice of exemption and to stay the effectiveness of the exemption pending consideration of the petition to reject. Union Pacific replied on January 30, 1997. The petition to reject the notice will be denied and the petition to stay will be dismissed as moot.

Under the provisions of 49 CFR 1180.6(a)(7)(ii), parties to exempt trackage rights agreements like the one involved here must submit one copy of the executed trackage rights agreement with the notice of exemption or within 10 days of the date that the agreement is executed, whichever is later. The copy of the agreement that the parties submitted here is a redacted copy. Compensation, insurance, and liability provisions have been withheld.

In its petition, UTU contends that the notice should be rejected because the Union Pacific failed to file the complete agreement with the Board for public scrutiny. UTU avers that the failure to file a complete and open agreement is contrary to the trackage rights class exemption. The union contends, also, that operation of the exemption should be stayed pending disposition of the rejection request.

In reply, Union Pacific asserts that UTU's requests are unsupported and should be denied. Union Pacific argues that its redaction of confidential and proprietary information is entirely appropriate and consistent with controlling Interstate Commerce Commission (ICC) and Board precedent. The railroad indicates, however, that it is agreeable to filing a complete copy of the trackage rights agreement under seal if the Board so desires.

Submitting a redacted agreement for the public docket, to protect confidential and proprietary information, is permissible and does not constitute grounds for rejection of a notice of exemption. See, e.g., Portland and Western Railroad, Inc.--Trackage Rights Exemption--Burlington Northern Railroad Company, Finance Docket No. 32765, et al. (ICC served Sept. 29, 1995); and Southern Pacific Transportation Company--Trackage Rights Exemption--Union Pacific Railroad Company, Finance Docket No.

32774 (ICC served Sept. 28, 1995). Moreover, UTU has not shown that the notice contains false or misleading information to otherwise warrant rejection. Accordingly, we will deny UTU's rejection request.

We note, however, that although Union Pacific has offered to submit a complete, confidential copy of its trackage rights agreement, it has not done so. Parties to proceedings under 49 CFR 1180.2(d)(7) should always file an unredacted version of their trackage rights agreement under seal, accompanied by a request for a protective order, whenever they submit a redacted version for the public file. Therefore, we will direct that Union Pacific submit a complete copy of its agreement, together with a motion for protective order. See, e.g., Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.--Trackage Rights Exemption--The Atchison, Topeka and Santa Fe Railway Company Lines Between Hutchinson, KS, and Chicago, IL, and Between Topeka, KS, and Kansas City, KS, Finance Docket No. 32721 (ICC served Oct. 13, 1995); Dakota Rail, Inc.--Acquisition of Control and Merger Exemption--Otter Tail Valley Railroad Company, Inc., STB Finance Docket No. 33133 (STB served Oct. 9, 1996); and 49 CFR 1104.14.

In view of our findings above, the request for stay is moot and will be dismissed. We note, in any event, that UTU has failed even to address, much less bear its burden of proof under, the standards that govern disposition of a petition for stay. See Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977).

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

It is ordered:

1. The petition to reject is denied.
2. The petition for stay is dismissed as moot.
3. Within 10 days of the service date of this decision, Union Pacific must submit a complete, confidential copy of its trackage rights agreement, accompanied by a motion for a protective order.
4. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary