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SERVICE DATE - SEPTEMBER 30, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 207X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
LANCASTER COUNTY, NE

Decided: September 25, 2003

By petition filed on June 12, 2003, 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 0.57-mile rail line known as the Jamaica Industrial Lead, formerly called the Lincoln Subdivision, from the BNSF¹ connection at milepost 56.43 to the end of the line at milepost 57.00 in Lincoln, Lancaster County, NE.² The exemption will be granted, subject to two environmental conditions and standard employee protective conditions.

BACKGROUND

According to UP, the sole active customer on the line from 2000-2002 was Snyder Industries (Snyder), which utilized a team track for the movement of a total of 266 cars of plastic tanks and 1 car of rubber articles during that period. UP points out, however, that, in January 2002, Snyder shifted its loading activity to a track on the Omaha, Lincoln and Beatrice Railway Company (OLB) in Lincoln. UP also points out that it still has access to this customer via a switching agreement between it and OLB and BNSF.³ UP states that Snyder is fully aware of the proposed abandonment and does not oppose it.

UP contends that, due to the relocation of its sole customer to another carrier, and that customer's continuing ability to use rail service via UP, no rail service is presently being operated on the line and there will be no adverse shipper impact as a result of the proposed abandonment. Finally, UP states that it is not aware of any other industry planning to locate on the line and there is no overhead traffic.

¹ The Burlington Northern and Santa Fe Railway Company.

² Notice of the filing was served and published in the Federal Register on July 2, 2003 (68 FR 39620).

³ UP also notes the availability at Lincoln of UP, BNSF, and OLB rail service, as well as truck service via a number of major highways, including Interstate Highway 80.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds 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 of the proposed abandonment under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. By minimizing the administrative expense of the application process, 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 cost of owning, maintaining, and operating, the line and by allowing UP to apply its assets more productively elsewhere on its system [40 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is not necessary to protect shippers from an abuse of market power. There is no overhead traffic and Snyder, the only shipper on the line, has alternative transportation service available and does not oppose the abandonment. Nevertheless, to ensure that Snyder is informed of the Board's decision, UP will be required to serve a copy of this decision on Snyder within 5 days of the service date and certify to the Board that it has done so. Given the market power finding, it is not necessary to determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interest of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

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 abandonment. See 49 CFR 1105.11. The Board's 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 11, 2003, and requested comments by September 9, 2003.

In the EA, SEA indicated that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment and requests 90 days' notification in advance of any activities that may disturb or destroy this marker. Therefore, SEA recommends that UP consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers. Also, the U.S. Army Corps of Engineers (Corps) stated that, if the proposed abandonment would involve work in waters of the United States, a

section 404 permit may be required. As such, the Corps has requested the opportunity to review final project plans to conduct a detailed review of permit requirements. Accordingly, SEA recommends that, prior to beginning salvage activities, UP consult with and submit final project plans to Mr. Mike Rabbe at the Corps to determine the Corps' permit requirements.

No comments to the EA were filed by the September 9, 2003 due date. Accordingly, the conditions recommended by SEA in the EA will be imposed. The proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. No one has sought a public use condition, and none will be imposed.⁴

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment by UP 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), and the conditions that UP shall: (1) consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers; and (2) consult with and submit final project plans to Mr. Mike Rabbe at the Corps to determine the Corps' permit requirements prior to beginning salvage activities.

2. UP is directed to served a copy of this decision on Snyder Industries within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)⁵ to allow rail service to continue must be received by the railroad and the Board by October 10, 2003, 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 \$1,100 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.”**

⁴ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by July 22, 2003.

⁵ See 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).

5. Provided no OFA has been received, this exemption will be effective on October 30, 2003. Petitions to stay must be filed by October 15, 2003, and petitions to reopen must be filed by October 27, 2003.

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 affected by UP's filing of a notice of consummation by September 30, 2004, 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 Nober.

Vernon A. Williams
Secretary