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SERVICE DATE – MARCH 6, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 238X)

UNION PACIFIC RAILROAD COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN YUBA COUNTY, CA

Decided: March 5, 2007

By petition filed on November 20, 2006, 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 discontinue service over an approximately 4.77-mile line of railroad known as the Pearson Industrial Lead, extending from milepost 133.29, near Alicia, to milepost 129.91, near Pearson, and milepost 0.00 to milepost 1.39, near Pearson, in Yuba County, CA. Notice of the filing was served and published in the Federal Register on December 8, 2006 (71 FR 71240). The exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

According to UP, the line was constructed in 1907 by the Northern Electric Railroad. One mile of the line consists of 85-pound rail, possibly laid in 1955, and the remaining length of the line consists of 60-pound rail. UP states that, for the last 2 years, there has been only one shipper on the line, KBI Norcal (KBI), a lumber receiver. UP submits data, which indicates that KBI handled 46 cars in 2004. UP asserts that, in early 2005, KBI agreed to consolidate its rail operations at another KBI facility, also served by UP, near Marysville, CA, and that KBI no longer uses the line.

UP alleges that: (1) there is no overhead traffic on the line; (2) there will be no adverse effect on shippers on the line; (3) there is no other industry in the area, and none is anticipated; and (4) no passenger or freight traffic will be diverted to other transportation systems or modes as a result of the proposed discontinuance of service. According to UP, after the discontinuance, the closest rail service will be provided by UP on the remaining portion of the Pearson Industrial Lead at the Alicia rail station, near Marysville. The stations subject to discontinuance, at Pearson and Reed, lie on local roads that are within several miles of the intersection of several state highways at Marysville and Yuba City.

UP, the owner of the line, states that the line is used only to access KBI's industry tracks. According to UP, the line is in poor condition, and there appears to be no prospect of new railroad traffic that would justify rehabilitation of the line at this time or in the foreseeable future. UP argues that the discontinuance of operations on the line will permit the avoidance of the cost and expenses for a proposed new grade crossing planned for the area.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without the Board's 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 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 costs of maintaining and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation is not necessary to protect shippers from the abuse of market power. There are no active shippers on the line. The only recent shipper on the line, KBI, continues to be served by UP at another facility. Nevertheless, to ensure that KBI is informed of our action, we will require UP to serve a copy of this decision on KBI within 5 days of the service date of this decision, and to certify to us that it has done so. Given the finding regarding market power, it is not necessary to determine whether the proposed discontinuance 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 interests 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.

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. 1247(d), or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Therefore, this decision 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, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by UP of its operations over 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 is directed to serve a copy of this decision on KBI within 5 days of the service date of this decision, and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by March 16, 2007, 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 \$1,300 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. Petitions to stay must be filed by March 16, 2007. Petitions to reopen must be filed by March 26, 2007.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on April 5, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary