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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 148X)

UNION PACIFIC RAILROAD COMPANY – ABANDONMENT EXEMPTION – IN COOS COUNTY, OR

STB Docket No. AB-515 (Sub-No. 1X)

CENTRAL OREGON & PACIFIC RAILROAD, INC. – DISCONTINUANCE EXEMPTION – IN COOS COUNTY, OR

Decided: October 27, 2000

By petition filed on July 12, 2000, Union Pacific Railroad Company (UP) and Central Oregon & Pacific Railroad, Inc. (CORP) jointly seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for UP to abandon, and for CORP to discontinue service over, a 1-mile line of railroad in Coos County, OR (the Line).[1] Notice of the petition was served and published in the Federal Register on August 1, 2000, at 65 FR 47001.

Ron's Oil Company (Ron's Oil) and Western Helicopter Services, Inc. (Western Helicopter), the two shippers on the Line, filed letter comments in opposition to the abandonment and discontinuance. CORP replied.[2] The City of Coquille filed a letter comment in support of the abandonment, as did several area residents and the Coquille Chamber of Commerce. UP and CORP claim that abandonment and discontinuance of service over the Line will not adversely affect the two shippers. We will grant the exemption, subject to environmental and standard employee protective conditions.

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[1] The Line extends from milepost 785.50 to milepost 786.50 in Coquille, OR, and traverses U.S. Postal Service Zip Code 97423. UP owns the Line and leases it to CORP. CORP originally leased the Line from Southern Pacific Transportation Company (SP) on December 31, 1994. See Central Oregon & Pacific Railroad, Inc.–Lease, Operation, and Acquisition Exemption–Southern Pacific Transportation Company, Finance Docket No. 32567 (ICC notice served Jan. 19, 1995, STB decision served Feb. 13, 1996). The Line became a line of the UP on February 1, 1998, when SP was merged into UP. See Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996).

[2] Ron's Oil complains that CORP did not serve it with a copy of the petition for exemption. Ron's Oil also indicates that it may need more time to file a supplemental protest. CORP was not required to serve Ron's Oil or any other shipper with a copy of the petition for exemption. Notice of the petition was published in the Federal Register. This is adequate notice.

BACKGROUND

Recent service over the Line has consisted of inbound shipments of propane to Ron's Oil and fertilizer (urea) to Western Helicopter. The Line is stub-ended, so no overhead traffic moves over it. In August 1998, a fire damaged a rail bridge located midway on the Line at Milepost 785.96, severing service to the east end of the Line, where Ron's Oil is located.[3] Since the fire, Ron's Oil has received its propane shipments via truck.

CORP argues that, even if it were to repair the bridge, the low volume of traffic does not justify the operating and maintenance expense necessary to continue to provide service to the two shippers. CORP states that it has offered both shippers the use of other nearby locations where their rail shipments can be transloaded. In addition, CORP notes that truck service is available. Therefore, CORP argues, shippers will be unaffected by the proposed abandonment and discontinuance.

CORP claims that the number of annual carloads moving to the Line since 1996 were as follows:

	Ron's Oil	Western Helicopter	Total
1996	30	0	30
1997	23	31	54
1998	8	17	25
1999	0	9	9
2000 (YTD)	0	8	8

CORP states that because of this low level of traffic it has performed only the minimal level of maintenance essential to keep the Line in operation. If operations on the Line are to continue, CORP claims that it would need to substantially increase maintenance to maintain it at FRA Class 1 safety standards. In addition, in order to re-institute and maintain service to the end of the Line, CORP would need to repair the fire-damaged bridge at an estimated cost of $54,240. Given the low volume of traffic that previously moved to the end of the Line, CORP contends that it cannot economically justify repairing the bridge even though operations on the Line were marginally profitable prior to 1998.

[3] Western Helicopter is located on the west side of the rail bridge and continues to receive rail service.

CORP acknowledges that service to Western Helicopter is unaffected by the damage to the bridge. However, by discontinuing service to Western Helicopter[4] CORP claims it will be able to avoid the significant cost of maintaining a signalized crossing as well as the other costs associated with maintaining and operating the western portion of the Line. With the loss of the traffic moving to the end of the Line, CORP maintains that it is more economical to arrange for the transloading of Western Helicopter's traffic at other nearby rail sidings.

Ron's Oil, by letter protest filed October 4, 2000, states that it received approximately 35 carloads of propane a year in the past and that it is in the process of re-orienting its method of transportation to switch from truck to rail car.[5] Ron's Oil claims it has been attempting to move more propane by rail, which would benefit the community by removing the need to transport the gas by truck, and anticipates that it could increase its rail traffic to 50 carloads next year. This shipper claims that it is the victim of the railroad's business decision not to repair the damaged bridge and restore service to the end of the Line. Ron's Oil states that it has made an offer and is ready, willing, and able to contribute to the $54,000 restoration of the burned bridge.

Western Helicopter, by letter protest filed September 6, 2000, states that it does custom fertilizer application work for a number of industrial land owners and government agencies in Coos County, where it has been doing business since 1975. Its fertilizer material is shipped to Coquille in 100-ton covered hopper cars during the winter season, usually in late January and February. Western Helicopter claims that during the last winter season it received approximately 12 cars over the Line and that in 1999 it received approximately 20 cars. The shipper states that this rail activity has occurred at Coquille on a seasonal basis for approximately ten years and that it expects to take delivery of 10 - 20 cars annually in the future. Western Helicopter maintains that if the track is abandoned, as proposed, from State Hwy. 42S at Sturdivant Park in Coquille to the east, it would no longer be able to use rail service because the remaining rail infrastructure at Sturdivant Park would not be adequate for handling rail cars and transferring loads. The shipper claims that no other sidings exist at Coquille for the rail shipment of its fertilizer materials and, consequently, that it would have to receive future shipments via truck service, at greater cost and with less efficiency.

CORP replies that, even if Ron's Oil were to increase the level of its rail traffic to 50 carloads a year, operations on the Line would still be extremely unprofitable given the deferred maintenance on the Line and the significant cost of repairing the fire-damaged bridge. CORP

[4] Western Helicopter's traffic currently moves to a siding on the Line where it is transloaded to trucks for delivery to various helicopter loading sites in the area.

[5] Ron's Oil states that it is the largest independent propane distributor in Coos County that serves both residential and commercial/industrial customers, and that the community does not have natural gas suppliers.

notes that the cost of repairing the bridge alone is $54,240,[6] which is more than five times the gross revenues CORP received from the 23 carloads shipped by Ron's Oil in 1997. CORP also explains that maintenance on the Line had been deferred because of the low volume of traffic moving over it. Maintenance would need to be increased significantly, CORP claims, if operations were to continue on the Line.

CORP argues that at 50 carloads a year the traffic from Ron's Oil would generate about $22,800 in gross revenues for CORP, or only about half the cost of repairing the bridge alone. At its historic average of 22 carloads a year, the traffic from Ron's Oil would generate about $10,032 in gross revenues, or less than one-fifth of the bridge repair costs. CORP states that its operating ratio is currently 69%. Consequently, based on its system-wide average costs, CORP's net annual operating income from serving Ron's Oil, absent the bridge repair costs, would be $7,068 at the 50 carloads per year level and $3,110 at the historic shipping level. Taking into account the bridge repair costs, on a system-wide average cost basis, CORP claims it would incur a first year operating loss of $47,172 at the 50 carloads level and an operating loss of $51,130 at the historic level.[7] Finally, CORP states that, although Ron's Oil claims that it has made an offer to contribute to the restoration of the bridge, CORP is unaware of any such offer being made to anyone at the railroad. CORP indicates that it is more than willing to work with Ron's Oil to find a suitable location where the transload operations can be performed in a more efficient and cost-effective manner.[8]

CORP argues that Western Helicopter's transloading operations will be unaffected by the abandonment of the Line. CORP has offered to make available to Western Helicopter a yard track in Coos Bay, some 17 miles from Coquille, to transload the fertilizer traffic. Depending on

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[6] The $54,240 figure set forth in the Petition apparently is the minimum cost necessary to bring the bridge back into service. The total fire damage to the bridge, CORP maintains, is actually $96,500.

[7] The estimated operating losses are extremely conservative, CORP claims, because the actual costs associated with handling the traffic for Ron's Oil are significantly higher than CORP's average costs. As explained in the Petition, Ron's Oil is only able to transload one rail car at a time, thus requiring a two-man crew to handle a single car to the end of the CORP line and another two-man crew to subsequently return and pick up the empty car.

[8] Since the filing of this petition, CORP states that it has discovered a large sinkhole on the right-of-way just north of the Line that would need to be repaired before any operations to the Line can be resumed. Preliminary estimates of repairing the sinkhole are at least $80,000. Consequently, in order to reinstitute service to Ron's Oil at the end of the Line, CORP claims it would need to make repairs of at least $134,240 on the bridge and the sinkhole.

the particular helicopter loading site utilized by Western Helicopter, the alternative site will, CORP claims, at most require Western Helicopter's trucks to traverse this additional 17 miles, and in some instances may actually be closer to the helicopter loading site.

By letter dated July 24, 2000, the City of Coquille[9] urges the Board to grant the abandonment and discontinuance of the Line. The City states that abandonment of this mile of track is crucial for its economic survival because the railroad right-of-way is necessary for the redevelopment of adjacent land formerly used by a Georgia Pacific lumber mill. The City claims that it has worked with various state and federal agencies in preparing the land for reuse, and that it has secured funds to create a tie-in from the existing downtown commercial area into the former mill site. The City asks that the Board act expeditiously in granting the abandonment and discontinuance.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned and service over it may not be discontinued without our 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 an 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)]. Moreover, an exemption will foster sound economic conditions and encourage efficient management by allowing UP and CORP to avoid operating and maintaining an uneconomic rail line and to use their assets more productively elsewhere on their systems [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected. Further, the abandonment and discontinuance exemption will allow the City of Coquille to pursue its efforts in developing a commercial shopping center which the City considers crucial to its economic survival.

Regulation is not necessary to protect shippers from an abuse of market power. The Line is stub-ended, thus there is no overhead traffic, and there has been very limited traffic originating on the Line. The urea traffic which is now being transloaded on the Line can be shifted to a nearby yard in Coos Bay for transloading and will not be seriously affected by the proposed abandonment. The propane traffic that formerly was transported by rail to the end of the Line

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[9] The Board received letters from Coquille's City Manager, the Chamber of Commerce, and approximately 29 other area residents who expressed support for the abandonment and discontinuance of service on the Line. One letter said that the railroad track should be kept for future growth.

has shifted to trucks. Furthermore, even before damage occurred to the rail bridge in August 1998, this propane traffic was on the decline. Although Ron's Oil indicates that it wants to move its shipments from truck back to rail and anticipates additional traffic, there is nothing to substantiate this claim. The area surrounding the Line has an adequate network of roadways and federal and state highways capable of handling truck traffic for the limited shipments that were or are being carried on the Line.

Protestants do not dispute the fact that operations over the Line would be unprofitable if CORP were required to repair the bridge. CORP has expressed its willingness to work with the involved shippers to facilitate any transportation problems they encounter, and has adequately addressed the concerns they have raised. Reasonable alternatives to continued rail service over the Line exist. All current traffic could continue to be transloaded from nearby rail lines without significant documented increases in cost to rail patrons. Nevertheless, to ensure that they are informed of our action, we will require the carriers to serve a copy of this decision on the shippers on the Line within 5 days of the service date of this decision and to certify to us that it has done so. In light of our market power finding, we need not determine whether the proposed abandonment and discontinuance are limited in scope.

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

Environmental Issues. UP and CORP submitted an environmental report with their joint petition and have 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. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) on September 6, 2000. In it, SEA recommended that, prior to salvage of the right-of-way, applicants consult with: (1) the Oregon Department of Environmental Quality (Oregon DEQ) and the U.S. Army Corps of Engineers with regard to the possible discharge into U.S. water from salvage operations that would require Federal and/or state permits, and (2) the U.S. Fish and Wildlife Service (US FWS) and the Oregon Department of Fish and Wildlife (Oregon DFW), who expressed concern that improper salvage of the right-of-way may negatively impact Coho salmon, a Federally listed endangered species. The EA also noted that the right-of-way may be suitable for other public use following abandonment and salvage of the rail line.

Subsequent to the issuance of its EA, SEA recommends that a new condition be imposed based upon comments received from the Oregon Parks and Recreation Department, State Historic Preservation Office (SHPO), regarding the dismantling of the rail line between Milepost

785.50 and Milepost 786.50. The SHPO states that this 1-mile rail line may represent a section of right-of-way of the former Southern Pacific Railroad which was instrumental in the development of the City of Coquille. Depending on the date this particular alignment was constructed through Coquille, the rail line is potentially eligible for inclusion in the National Register of Historic Places. Therefore, SEA recommends that a condition be imposed which requires UP to retain its interest in and take no steps to alter the historic integrity of the Line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

We will impose the conditions recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment and discontinuance, if implemented as conditioned, 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, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by UP of, and the discontinuance of service by CORP 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), and subject to the conditions: (1) that applicants, prior to any salvage activities, consult with the Oregon DEQ, the U.S. Army Corps of Engineers, the US FWS, and the Oregon DFW; and (2) that UP retain its interest in and take no steps to alter the historic integrity of the rail line located between milepost 785.50, and milepost 786.50, until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. The carriers are directed to serve a copy of this decision on the shippers on the Line within 5 days after the service date of this decision and to certify to the Board that they have done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)[10] to allow rail service to continue must be received by the carriers and the Board by November 9, 2000, 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 the filing fee, which currently is set at $1,000. 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 corner of the envelope: "**Office of Proceedings, AB-OFA**."

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[10] See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

5. Provided no OFA has been received, this exemption will be effective on November 29, 2000. Petitions to stay must be filed by November 14, 2000, and petitions to reopen must be filed by November 24, 2000.

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 effected by UP's filing of a notice of consummation by October 30, 2001, 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 no later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

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

Vernon A. Williams
Secretary