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SERVICE DATE - SEPTEMBER 26, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 200X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN FRANKLIN AND BUTLER COUNTIES, IA

Decided: September 25, 2003

By petition filed on June 9, 2003,¹ 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 the eastern portion of its Bristow Subdivision, extending between milepost 318.36 near Hampton and milepost 294.75 near Allison, a distance of 23.61 miles, in Franklin and Butler Counties, IA.² A request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by the Iowa Trails Council (Council), on behalf of the Franklin and Butler Counties Conservation Boards (Conservation Boards). The exemption will be granted, subject to trail use, public use, environmental, historic preservation, and standard employee protective conditions.

BACKGROUND

UP states that there is only one shipper on the line, AgVantage FS, Inc. (AgVantage), and it has already ceased shipping its product on the line³ and begun trucking its product (corn) to a newly expanded grain elevator at Chapin, IA. According to UP, AgVantage does not oppose the abandonment and in fact fully supports it. UP adds that its rail service will still be available at the existing and expanded grain elevators at Chapin and Hampton. Furthermore, UP states that stations along the line are accessible to major highways should the need for trucking service arise.⁴

¹ Notice of the filing was served and published in the Federal Register on June 27, 2003 (68 FR 38421).

² UP was granted an exemption to abandon the western portion of the Bristow Subdivision in Union Pacific Railroad Company—Abandonment Exemption—in Franklin County, IA, STB Docket No. AB-33 (Sub-No. 201X) (STB served Sept. 12, 2003).

³ AgVantage shipped 393 carloads in 2002, and 148 carloads in 2001.

⁴ Specifically, UP states that stations on the west end of the line are accessible to U.S.

(continued...)

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 an abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy in this case. 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 expense of owning and maintaining a rail line that is no longer used and allowing it to use its assets more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. The only shipper on the line, AgVantage, apparently no longer uses this line and does not object to the abandonment. Nevertheless, to ensure that AgVantage is informed of the Board's action, UP will be required to serve a copy of this decision on the shipper within 5 days of the service date and to 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's exemption authority may not be used 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.

UP has submitted a combined environmental and historic report with its petition and has notified the appropriate Federal, state, and local government 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 report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human

⁴(...continued)

Highway 65 in Hampton, and stations on the east end of the line are accessible to U.S. Highway 218, which is 15 miles east of Allison.

environment. SEA served an environmental assessment (EA) on August 8, 2003, and requested comments.

In the EA, SEA indicates that the National Geodetic Survey (NGS) has identified 13 geodetic station markers that could be affected by the proposed abandonment. Therefore, SEA recommends that UP notify NGS 90 days prior to salvage activities in order to plan for the potential relocation of the geodetic station markers. Additionally, the State Historical Society of Iowa has not completed its assessment of the potential impact of this project on historic resources, as required by the National Historic Preservation Act. 16 U.S.C. 470(f). Thus, SEA further recommends that UP retain its interest in and take no steps to alter the historic integrity of the right-of-way until completion of the Section 106 process.

No comments to the EA were filed by the September 5, 2003 due date. Accordingly, the conditions recommended by SEA in the EA will be imposed. The proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As indicated, on July 1, 2003, the Council, on behalf of the Conservation Boards, timely filed a request for the issuance of a NITU for the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).⁵ The Council and the Conservation Boards submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service, as required at 49 CFR 1152.29. By letter filed on July 21, 2003, UP states that it is willing to negotiate with the Council for interim trail use. Because the request complies with the requirements of 49 CFR 1152.29, and UP is willing to enter into trail use negotiations, a NITU will be issued as requested. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in the EA that, if abandonment and salvage of the line does take place, the right-of-way may be suitable for other public use. The Council, on behalf of the Conservation Boards, requests imposition of a 180-day public use condition for the line precluding UP from removing or

⁵ The request supersedes the Council's previous requests filed on April 7, 2003, June 10, 2003, and June 16, 2003.

destroying potential trail-related structures such as bridges, trestles, culverts, ballast and other such items. The Council states that the corridor would make an excellent public trail and join together other existing trails.

The Board has determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is the Board's policy to impose them concurrently, subsequent to the execution of a trail use agreement. The Council and the Conservation Boards have met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the right-of-way to be abandoned, commencing from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. A public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the Council and the Conservation Boards, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. An offer of financial assistance (OFA) to acquire a rail line for continued rail service or to subsidize rail operations takes priority over interim trail use/rail banking and public use.⁶ Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, an exemption from the prior approval requirements of 49 U.S.C. 10903 for the abandonment by UP of the above-described line is granted, 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 that UP shall: (1) retain its interest in and take no steps to alter

⁶ See Trails, 2 I.C.C.2d at 608.

the historic integrity of the right-of-way until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (2) notify the NGS 90 days prior to salvage activities in order to plan for the potential relocation of geodetic station markers; (3) leave intact all of the right-of-way, including bridges, trestles, culverts and tunnels (but not track and track materials, except ballast), for a period of 180 days from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use; and (4) comply with the terms and conditions for implementing interim trail use/rail banking as set forth below.

2. UP is directed to serve a copy of this decision and notice on AgVantage FS, Inc., within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for the management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the conditions imposed above have been met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by October 6, 2003, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). Each OFA must be accompanied by a \$1,100 filing fee. See 49 CFR 1002.2(f)(25).

8. 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.”**

9. Provided no OFA has been received, this exemption will be effective on October 27, 2003. Petitions to stay must be filed by October 14, 2003, and petitions to reopen must be filed by October 21, 2003.

10. 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 September 26, 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 no later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary