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SERVICE DATE – NOVEMBER 23, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 256X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN DALLAS COUNTY, TX

STB Docket No. AB-585 (Sub-No. 2X)

DALLAS, GARLAND & NORTHEASTERN RAILROAD COMPANY—
DISCONTINUANCE OF SERVICE EXEMPTION—IN DALLAS COUNTY, TX

Decided: November 16, 2007

By petition filed on August 7, 2007, Union Pacific Railroad Company (UP) and Dallas, Garland & Northeastern Railroad Company (DGNO) 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 DGNO to discontinue service over, the Trinity Industrial Lead, between milepost 0.0 near Terminal Junction and milepost 4.1 near Mockingbird Lane, a distance of 4.1 miles in Dallas County, TX. Notice of the filing was served and published in the Federal Register on August 27, 2007 (72 FR 49043). A request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed by the City of Dallas, TX (the City). We will grant the exemption, subject to public use, environmental, and standard employee protective conditions.

BACKGROUND

The line proposed for abandonment and discontinuance of service has been operated as excepted track and used to deliver rail cars to two facilities, Cargill Foods (Cargill) and Union Pacific Distribution Services (UPDS).¹ The UPDS facility was operated by Kinder Morgan Materials Services (Kinder Morgan) under a contract with UPDS.

Petitioners state that Cargill received 1,493 carloads in 2005, 1,737 carloads in 2006, and 5 carloads in 2007. According to petitioners, Cargill has relocated its rail activity elsewhere in the Dallas Metropolitan area and continues to receive rail service there, but is no longer located on the line. Kinder Morgan operated a transload facility in which it handled 381 carloads in 2005, 45 carloads in 2006, and no carloads in 2007. However, UPDS has relocated the transload facility elsewhere in the Dallas Metropolitan area and no longer uses the line; shipments destined to the UPDS facility are now delivered to the relocated facility.

¹ UPDS is an affiliate of UP.

DGNO, as the operator of the line, states that it does not anticipate that any traffic will originate, terminate or move in overhead service over the line in the foreseeable future, and that there is no current or future demand for rail service on the line. Petitioners add that they have been notified by both shippers that they do not intend to oppose the abandonment and discontinuance.

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, 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(2) and (7)]. An exemption also will foster sound economic conditions and encourage efficient management by permitting the rationalization of an unnecessary rail line from the system [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. No traffic is presently moving over the line as Cargill and UPDS are receiving rail service at their relocated facilities. Although petitioners have spoken with the shippers advising them of their plan to abandon and discontinue service and served Cargill with a copy of the exemption petition, neither Cargill nor UPDS has filed opposition. Nevertheless, to ensure that the shippers are aware of our action, petitioners will be required to serve a copy of this decision on each shipper within 5 days of the service date of this decision and to certify to the Board that they have done so. Given our market power finding, we need not 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 interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

Petitioners have submitted an environmental report with their 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 the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on October 5, 2007.

In the EA, SEA noted that, in an e-mail dated August 10, 2007, Mr. Simon Monroe with the National Geodetic Survey (NGS) stated that there are 7 geodetic station markers that may be located in the proposed project area. Therefore, SEA recommends that a condition be imposed requiring UP to consult with NGS and notify NGS at least 90 days prior to initiating salvage activities that would disturb or destroy any of the station markers.

No comments to the EA were filed by the November 5, 2007 due date. We will impose the condition recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As indicated, the City has requested issuance of an interim trail use/rail banking condition under the National Trails System Act, 16 U.S.C. 1247(d), so that it may negotiate with UP for acquisition of the right-of-way for use as a trail. In a letter filed on October 31, 2007, UP states that it does not support the City's request for trail use. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board has no authority to issue a NITU here. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609.² The City has requested imposition of a public use condition here. The City's submission meets the requirements for such a condition prescribed at 49 CFR 1152.28(a)(2) by specifying: (i) the condition sought; (ii) the public importance of the condition; (iii) the time during which the condition would be effective; and (iv) justification for the time requested. The City states that: (1) the corridor would make an excellent recreational trail; (2) conversion of the property and the existing track to a passenger line as part of a new modern streetcar system is currently being studied; (3) portions of the right-of-way may be needed for a new road system being constructed as part of the City's Trinity River Corridor Project (for the main portion of the Woodall Rodgers extension across the new Margaret Hunt Hill Bridge and/or for approach ramps for that road as well as for the proposed Trinity Parkway); (4) portions of the right-of-way may be needed in order for the City to facilitate construction of a new "Baker Pumping Station" as part of the City's upgraded internal drainage system; and (5) portions of the right-of-way may be needed to expand and/or reconfigure portions of the existing internal drainage sump system which runs intermittently along the entire length of the east levee of the Trinity River.

Accordingly, a 180-day public use condition will be imposed, commencing from the effective date of this decision, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. Also, the Board notes that 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

² Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

for public purposes. Therefore, UP is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

The parties should note that operation of the public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision 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 public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the public use process may proceed.

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, and the discontinuance of service by DGNO 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 that UP shall: (1) consult with NGS and notify NGS at least 90 days prior to initiating salvage activities that would disturb or destroy any geodetic station markers, and (2) keep intact the right-of-way, including bridges, trestles, culverts and tunnels (but not track and related materials), for a period of 180 days commencing from the effective date of the exemption (until June 20, 2008), to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use.

2. The request for issuance of a notice of interim trail use is denied.

3. Petitioners are directed to serve a copy of this decision on Cargill and UPDS within 5 days after the service date of this decision and to certify to the Board that they have done so.

4. 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 December 3, 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 the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

5. OFAs and related correspondence to the Board must refer to these proceedings. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

6. Provided no OFA has been received, this exemption will be effective December 23, 2007. Petitions to stay must be filed by December 8, 2007, and petitions to reopen must be filed by December 18, 2007.

7. 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 November 23, 2008, 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 Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary