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SERVICE DATE – OCTOBER 5, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 250X)

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

Decided: October 3, 2007

By petition filed on June 18, 2007, 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 1.98-mile line of railroad known as the Weeping Water Industrial Lead extending from milepost 461.74 to milepost 463.72 near Weeping Water, in Cass County, NE. Notice of the filing was served and published in the Federal Register on July 6, 2007 (72 FR 37076-77). The exemption will be granted, subject to an environmental condition and standard employee protective conditions.

BACKGROUND

According to UP, the line was constructed by the Missouri Pacific Railway in the 1880s. The line consists of 85-pound jointed rail, which was laid in 1918 and 1919. UP states that, for the last 2 years, there has been only one shipper on the line, Jerico Services, Inc. (Jerico). UP submits data showing that Jerico shipped 16 carloads of magnesium chloride brine in 2005, and 22 carloads of magnesium chloride brine in 2006. UP states that, by agreement, Jerico's corporate officers relocated their facility to a site in Weeping Water immediately east of the proposed abandonment, also served by UP, and that Jerico no longer uses the line.

UP states that the proposed abandonment will have no adverse effect on shippers on the line. UP indicates that the line is used only to access Jerico's industry tracks. According to UP, the line is in poor condition and underutilized, there appears to be no prospect for new rail business on the line, and there is no overhead traffic on the line. UP asserts that the proposed abandonment will permit UP to eliminate 2 miles of operations and maintenance, and avoid a major upgrade to the Nebraska Route 50 grade crossing that would otherwise be required because of the widening of Nebraska Route 50. UP notes that the elimination of the crossing will save significant construction expenses and enhance safety for both UP and motorists.

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 is found 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 minimize the need for Federal regulatory control over the rail transportation system, and will reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving UP of the costs of maintaining and operating a line that is no longer used [49 U.S.C. 10101(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. Jerico, the only shipper on the line, has relocated to a site immediately east of the proposed abandonment that is rail served by UP. Nevertheless, to ensure that Jerico is informed of this action, the Board will require UP to serve a copy of this decision on Jerico within 5 days of the service date and to certify to the Board that it has done so. Given our market power finding, the Board 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, the Board will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

UP has submitted a combined environmental and historic 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 and historic 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 17, 2007, and requested comments by September 17, 2007.

In the EA, SEA recommended that one condition be imposed on any decision granting abandonment authority. SEA states in the EA that, in a letter dated January 25, 2007, Mr. Larry Janis, Chief of the Environmental, Economics, and Cultural Resources Section Planning Branch of the U.S. Army Corps of Engineers, Omaha District (Corps), indicates that there are no recognized levees in the area. However, Mr. Janis notes that UP should ensure that the proposed project is in compliance with flood plain management criteria of Cass County and the State of Nebraska, and, if any activities involve any work in the waters of the United States, a section 404 permit may be required. SEA also states in the EA that, according to UP, UP intends to salvage the right-of-way, including the single bridge on the line. Accordingly, SEA recommends that UP consult with the Corps prior to commencement of any salvage activities regarding the Corps' requirements and, if applicable, comply with the reasonable requirements of the Corps.

No comments to the EA were filed by the September 17, 2007 due date. Therefore, the Board will impose the condition recommended by SEA. Accordingly, based on SEA's recommendation, the Board concludes 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. UP noted in its petition that the right-of-way proposed for abandonment is non-reversionary and therefore UP does not believe that it is suitable for other public purposes, including roads or highways, other forms of mass transit, conservation, energy production or transmission, in that the area is adequately served by existing roads and utilities. SEA, however, has indicated in the EA that the right-of-way may be suitable for public use under 49 U.S.C. 10905. No one has sought a public use condition, and none will be imposed.¹

This action 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 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 (1978), and subject to the condition that UP consult with the Corps prior to commencement of any salvage activities regarding the Corps' requirements and, if applicable, comply with the reasonable requirements of the Corps.

2. UP must serve a copy of this decision on Jerico 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)(1) to allow rail service to continue must be received by the railroad and the Board by October 15, 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).

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. Provided no OFA has been received, this exemption will be effective on November 4, 2007. Petitions to stay must be filed by October 22, 2007, and petitions to reopen must be filed by October 30, 2007.

¹ Public use requests were due no later than 20 days after publication of the notice in the Federal Register, or by July 26, 2007.

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 5, 2008, and there are not 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