

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33376

UNION PACIFIC RAILROAD COMPANY--EXEMPTION FROM
49 U.S.C. 10904 and 49 U.S.C. 10905

Decided: May 14, 1997

BACKGROUND

By petition filed March 19, 1997, Union Pacific Railroad Company (UP) informs the Board of its intent to file a notice of exemption on or about June 2, 1997,¹ and seeks to have the notice exempted from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905.

The line of railroad involved is a 0.09-mile segment of UP's Fort Dodge Branch line extending from milepost 61.57 to milepost 61.66, near Mason City, in Cerro Gordo County, IA.² According to UP, the State of Iowa is constructing a four-lane realignment of U.S. Highway 18 south of Mason City, IA, that will cross the rail line. To permit the Iowa Department of Transportation to avoid the costly construction of an overpass, UP has agreed to seek abandonment of the segment. UP requests exemption from the OFA and public use provisions to permit immediate availability of the right-of-way for the project this summer.

On April 14, 1997, Iowa Traction Railroad Company (IATR) filed a statement opposing UP's petition and stating that it intends to file an OFA to acquire the line for continued rail service.

On May 7, 1997, UP filed a request to withdraw its petition without prejudice to a possible refiling of a similar petition in the future.

DISCUSSION AND CONCLUSIONS

Because UP may choose to refile a similar petition and has advised it would use the class exemption procedure in seeking abandonment approval, we note that in a limited number of cases, the Board (and the ICC before it) has granted exemption requests from the OFA and public use provisions of the statute as part of authorizing an abandonment. In doing so, the Board has applied strict criteria to such extraordinary requests. Exemptions from 49 U.S.C. 10904-05 have been granted from time to time, but only when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service. *See K & E Railway Company--Abandonment Exemption--In Alfalfa, Garfield, and Grant Counties, OK, and Barber County, KS*, STB Docket No. AB-480X (STB served Dec. 31, 1996). And the Board has only granted exemptions from those provisions as part of a petition for exemption under 49 U.S.C. 10502 for abandonment authority or as part of a formal abandonment application under 49 U.S.C. 10903, and not as part of the 2-year out-of-service class exemption that UP has stated it intends to use here.

Moreover, in creating the class exemption for lines that have been out of service for at least 2 years, the agency observed that those abandonments in almost all instances would be noncontroversial and unopposed. *Exemption of Out of Service Rail Lines*, 885, 889 (1983). The

¹ UP has reserved STB Docket No. AB-33 (Sub-No. 110X) for the filing of the abandonment notice.

² This segment was included in a previously filed notice of exemption. That notice was subsequently withdrawn by UP and dismissed by the Board in STB Docket No. AB-33 (Sub-No. 107X) (STB served Feb. 28, 1997).

agency noted that “only rarely would there be a public need or interest in continued transportation service over the line.” *Id.* 892.

Given the concern expressed by IATR as to key elements of UP’s overall abandonment proposal, we find that use of the expedited class exemption procedures for abandonment authority would not be appropriate here. *See Consolidated Rail Corporation--Exemption--Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH*, Docket No. AB-167 (Sub-No. 1088X) (ICC served June 14, 1989). Rather, we find that UP, if it decided to proceed with the abandonment it has described, must file at minimum a petition for exemption under section 10502, and we will at that time consider all aspects of the proposed transaction, including whether to exempt the transaction from the OFA and public use statutes. That petition should be served on all shippers whose traffic has moved over the line in the last 2 years, as well as on IATR.

It is ordered:

1. UP's request to withdraw the petition for exemption is granted.
2. The proceeding is discontinued.
3. This decision is effective on its service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary