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SERVICE DATE LATE RELEASE - APRIL 13, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33652

UNION PACIFIC RAILROAD COMPANY
—ACQUISITION AND OPERATION EXEMPTION—
MID MICHIGAN RAILROAD, INC.

Decided: April 13, 1999

By petition filed August 25, 1998, Union Pacific Railroad Company (UP) seeks an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25, for its acquisition and operation of a 107.3-mile line of railroad owned by Mid Michigan Railroad, Inc. (Mid Michigan),¹ extending from milepost 0.4 at Saint Joseph, MO, to milepost 107.7 at Upland, KS, in Brown, Doniphan, Marshall, and Nemaha Counties, KS, and Buchanan County, Mo.² By decision served November 23, 1998, a proceeding was instituted to consider the petition and the protest filed by the Kansas Department of Transportation (KDOT).³ Assure Crop, a division of Ag Connection Sales, Inc., of Seneca, KS, has submitted a letter in support of the proposed transaction. We will grant the exemption, subject to environmental and employee protective conditions.

BACKGROUND

UP formerly was the operator of this line⁴ and seeks to acquire the line, as part of its service recovery program, both to add additional capacity to its Central Corridor and to provide service to

¹ Actual operations over the subject line are conducted by Northeast Kansas & Missouri Division of Mid Michigan Railroad, Inc. (NEKM).

² A related notice of exemption, in Union Pacific Railroad Company—Trackage Rights Exemption—Blue Rapids Railway Company, STB Finance Docket No. 33720 (STB served Apr. 6, 1999), allows UP to continue trackage rights exercised by NEKM over a connecting line.

³ This protest subsequently has been withdrawn.

⁴ The line was purchased by Mid Michigan pursuant to an exemption granted in Mid Michigan Railroad Company, Inc.—Purchase Exemption—The St. Joseph & Grand Island Railroad Company Line Between St. Joseph, MO and Upland, KS, Finance Docket No. 31482 (ICC served Aug. 7, 1989), and UP's operations over the line were discontinued pursuant to an exemption granted in Union Pacific Railroad Company—Discontinuance of Service Exemption—Between St. Joseph, MO and Upland, KS, Docket No. AB-33 (Sub-No. 65X) (ICC served June 4, 1990).

shippers on the line. UP plans to route empty, westbound coal trains, moving from Kansas City, KS, to the Powder River Basin (PRB), over the portion of the line from Hiawatha, KS, to Upland.⁵ UP projects that an average of 15 to 18 empty coal trains would operate over this line daily. As a consequence, the line will be upgraded with ties and ballast, so that operating speeds can be increased to 40 m.p.h. over portions of the line between Hiawatha and Upland, thus providing significant service advantages to local customers on the line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502, we must exempt a transaction or service from regulation when we find that: (1) 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 needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 11323-25 is warranted under the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. By reducing the administrative expense of the application process, an exemption will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)] and reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)]. By assisting UP in its service recovery effort and by promoting more efficient operations through rerouting existing traffic over the subject line, while maintaining service to existing shippers, an exemption will promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues [49 U.S.C. 10101(3)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], and promote efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation is not necessary to protect shippers from an abuse of market power as service to shippers on the line will be maintained or improved and UP's service for overhead coal traffic will become more efficient. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. Accordingly, as a condition to granting this

⁵ These trains will be routed northward from Kansas City over UP's Falls City Subdivision to Hiawatha, then westward over the subject line to Upland, then northward over UP's Marysville Subdivision to Gibbon Junction, NE, and then westward to the PRB. The trains currently move either via Topeka, KS, or via Omaha, NE. The rerouting will relieve traffic congestion on the line between Kansas City and Upland via Topeka, which will continue to be the route for loaded, eastbound coal trains. By separating the eastbound and westbound routings, delays incurred in scheduling meets between opposing trains will be reduced, thus reducing transit times and improving delivery reliability.

exemption, we will impose the employee protective conditions established in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Because of the substantial increase in traffic over the line that is projected to result from this transaction, our Section of Environmental Analysis (SEA) has analyzed the probable effects of the proposed action on the quality of the human environment. SEA issued a Draft Environment Assessment on December 21, 1998, for public review and comment. After consideration of all the comments to the Draft EA, further environmental analysis, and additional consultation with interested parties, SEA issued a Final EA on March 26, 1999.

In the Final EA, SEA recommended that a number of conditions—related to freight rail operations, highway/rail at-grade crossings, noise, a negotiated agreement, air quality, and monitoring and enforcement, as set forth in the Appendix to this decision—be imposed on the exemption UP seeks for this transaction, as mitigation of potentially significant environmental impacts. The environmental concerns addressed by the recommended conditions are discussed in the Final EA and, in light of the lack of any continuing opposition to the transaction (subject to imposition of the recommended conditions), need not be repeated here. We have reviewed the Draft EA, and the Final EA and the final recommended conditions, and we will impose the conditions recommended by SEA.⁶ Based on SEA's final, recommendations, we conclude that the proposed acquisition and the resulting operations, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

UP, by pleading filed March 15, 1999, seeks expedited consideration of its petition for exemption to alleviate service problems in its Central Corridor. This request is reasonable, and, accordingly, the exemption will be effective on its date of service.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt this transaction from the prior approval requirements of 49 U.S.C. 11323-25, subject to the employee protective conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), and subject to the additional conditions set forth in the Appendix to this decision.
2. This decision will be published in the Federal Register on April 16, 1999.

⁶ Condition 6, set forth in the Appendix, adopts a memorandum of understanding (MOU), negotiated among interested parties, concerning particular impacts of UP's projected operations upon the City of Seneca, KS. By joint petition filed March 12, 1999, the City of Seneca, the Nemaha Valley Parent Teachers Association, and UP request that their settlement, as reflected in the MOU, be prescribed in lieu of any other mitigation that might be imposed with respect to operations through Seneca.

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3. The exemption is effective on date of service.
4. Petitions to reopen must be filed by May 5, 1999.

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

Vernon A. Williams
Secretary

APPENDIX

Condition 1. UP shall comply with the requirements in the Federal Railroad Administration's (FRA) Proposed Rule for "gross ton-mile based" inspections (49 CFR Part 213.237, Docket No. RST-90-1) on the following rail line segments in Kansas:

- Kansas City - Atchison
- Atchison - Hiawatha
- Hiawatha - Upland.

FRA's Proposed Rule includes a provision that specifically requires railroads to conduct track inspections to detect rail flaws on a rail line segment at least once every 40 million gross tons per track mile or annually, whichever is more frequent. If FRA's Final Rule imposes a different inspection standard, then UP shall comply with the standard in the Final Rule.

Condition 2. UP shall continue its consultation with the FRA, KDOT, and the communities along the Hiawatha-Upland corridor to implement the recommendations of the Corridor Review Team composed of UP, FRA, and KDOT.

Condition 3. If no agreement under Condition 2 has been reached with the City of Sabetha, KS, within six months after the service date of this decision, UP shall upgrade the highway/rail at-grade crossing warning device at 6th Street in Sabetha from crossbucks to flashing lights.⁷

Condition 4. As agreed to by UP, UP shall undertake the following measures:

- a. UP will provide Operation Lifesaver programs in the future as requested by communities on the Hiawatha-Upland rail line segment.
- b. UP will install UP's standard private crossing signs and stop signs at all private highway/rail at-grade crossings which are open to public use.
- c. UP will upgrade, where necessary, all existing highway/rail at-grade crossing signal circuitry to accommodate the proposed rail operations.
- d. At all highway/rail at-grade crossings with active warning devices, UP will post a visible emergency toll free 800 number to be called if signal crossing devices malfunction.
- e. UP will provide toll free numbers to all emergency response forces in

⁷ This condition, as it appeared in the EA, was ambiguous and has been clarified by SEA in order to remove the ambiguity.

communities affected by the acquisition. These numbers will provide access to appropriate UP personnel who may be contacted by communities in emergency situations.

- f. UP will offer Grade Crossing Collision Investigation classes and emergency response training to law enforcement agencies and first responders in affected communities.
- g. To enhance highway/rail at-grade crossing safety, UP will undertake vegetation control procedures along the Hiawatha-Upland corridor.

Condition 5. UP shall consult with state and local officials to find suitable approaches for mitigating the adverse noise effects in the following communities on the Hiawatha-Upland rail line segment in Kansas:

- Hamlin
- Morrill
- Sabetha
- Oneida
- Baileyville
- Axtell
- Beattie
- Home

Mitigation for a specific community may include a combination of: (1) eliminating highway/rail at-grade crossings, (2) installing safety measures that meet future FRA requirements for no-horn quiet zones, or (3) other measures as UP and an affected community may negotiate.

Condition 6. UP shall comply with the terms of the MOU, dated March 12, 1999, executed by UP, City of Seneca, and the Nemaha Valley Parent Teachers Association, regarding local environmental issues associated with this transaction.

Condition 7. As agreed to by UP, UP will use operating practices that are designed to reduce locomotive fuel consumption and emissions. These include throttle modulation, use of dynamic braking, increased use of pacing and coasting trains and isolating unneeded horsepower.

Condition 8. If there is a material change in the facts or circumstances upon which the Board relied in imposing specific environmental mitigation conditions in this decision, and upon petition by any party who demonstrates such material changes, the Board may review the continuing applicability of its final mitigation, if warranted.