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SERVICE DATE – JANUARY 30, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 277X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
LAFOURCHE PARISH, LA.

Decided: January 27, 2012

This decision postpones the effective date of the exemption sought in this proceeding to enable the Board to consider the issues raised.

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a portion of a line of railroad known as the Lockport Branch, between milepost 1.7 near Raceland and milepost 14.2 near Jay, a distance of 12.5 miles, in Lafourche Parish, La. (the line). Notice of the exemption was served and published in the Federal Register on November 14, 2011 (76 Fed. Reg. 70,534-35).¹ The exemption was scheduled to become effective on December 14, 2011, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed by November 25, 2011.

On November 23, 2011, as supplemented on November 29, 2011, Valentine LLC (Valentine) filed a formal expression of intent to file an OFA to purchase the line. This filing automatically stayed the effective date of the exemption for 10 days, until December 24, 2011. See 49 C.F.R. § 1152.27(c)(2)(i). In its November 29, 2011 filing, Valentine requested that the date for filing OFAs be extended until 10 days after UP furnishes Valentine with a formal appraisal of the value of the land in the railroad right-of-way to which UP has marketable fee title. By decision served on December 13, 2011, the Board granted Valentine's request, tolling the time period for Valentine to file an OFA until 10 days after UP notifies the Board in writing that it has provided Valentine with the requested information and postponing the effective date of the exemption until 10 days after the due date for filing an OFA.

On December 6, 2011, BNSF Railway Company (BNSF) submitted a letter asserting that it has authority sanctioned by the Board to serve customers on the line. BNSF suggests that the

¹ The notice also embraced Docket No. AB 318 (Sub-No. 7X), Louisiana & Delta Railroad, Inc.—Discontinuance of Service Exemption—in Lafourche Parish, La. (LDRR Discontinuance), in which Louisiana & Delta Railroad, Inc. (LDRR) sought an exemption to discontinue service over the line. That discontinuance exemption became effective on December 14, 2011, and LDRR filed a notice of consummation on December 28, 2011.

Board can grant UP the requested exemption, but preclude it from consummating the abandonment and salvaging the line, until BNSF voluntarily discontinues its authority to serve customers on the line. BNSF also requests that, if Valentine or any other party pursues an OFA in this proceeding, the Board make such an OFA subject to BNSF's rights to serve all shipper facilities along the line. UP contests BNSF's claim,² and Valentine commented on this issue as well.³ Valentine subsequently notified the Board that it does not intend to file an OFA and has asked the Board either to reject UP's notice of exemption or limit the exemption to discontinuance of service.⁴ LDRR has filed a notice of consummation of its discontinuance authority in Docket No. AB 318 (Sub-No. 7X), stating that it is consummating its discontinuance of service as of December 31, 2011.⁵

Meanwhile, on November 28, 2011, Lafourche Parish Government requested imposition of a public use condition under 49 U.S.C. § 10905 and issuance of a Notice of Interim Trail Use or Abandonment (NITU) under 49 C.F.R. § 1152.29. On January 17, 2012, UP agreed to negotiate with Lafourche Parish Government and supported its request for a NITU. On January 18, 2012, Valentine submitted a letter opposing trail use and asserting that BNSF's alleged authority to operate over the line precludes the Board from authorizing abandonment, which in turn precludes interim trail use/rail banking.

In light of the issues raised here and the various pending requests for relief, a housekeeping stay of the effective date of UP's exemption is appropriate to provide sufficient time for the Board to consider fully the issues raised. Thus, the effective date of the exemption will be postponed until further order of the Board. To expedite resolution of this matter, each party shall file, by February 9, 2012, a copy of any document referenced or relied upon in its submissions to date (with the exception of agency or court decisions). This includes, for example, the Term Sheet and subsequent September 1, 2000 agreement discussed in UP's December 23, 2011 letter. The parties may also submit additional evidence and argument in support of their positions. Thereafter, the Board will determine whether the controversy here can be resolved in the context of the present class exemption proceeding.

² See UP letters submitted December 23, 2011 and January 18, 2012. On January 6, 2012, BNSF submitted a letter replying to UP.

³ See Valentine letter submitted December 7, 2011.

⁴ Valentine letter (submitted Dec. 29, 2011).

⁵ LDRR Discontinuance, LDRR notice (submitted Dec. 28, 2011).

It is ordered:

1. The effective date of the exemption in this proceeding is postponed until further order of the Board.

2. By February 9, 2012, each party shall file a copy of any documentary evidence referred to or relied upon in its submissions to date and may file any additional evidence and argument it wishes to submit in support of its position.

3. This decision is effective on its date of service.

By the Board, Daniel R. Elliott, Chairman.