

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 296X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
RIVERSIDE AND SAN BERNARDINO COUNTIES, CAL.

Decided: May 3, 2011

By petition filed on March 3, 2011, 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 2 segments, totaling 5.0 miles, of the Riverside Industrial Lead in Riverside and San Bernardino Counties, Cal. The northern segment begins at milepost 540.15 near Colton and ends at milepost 543.88 near Riverside (North Segment), a distance of 3.73 miles, of which 2.27 miles are in San Bernardino County and 1.46 miles are in Riverside County. The southern segment begins at milepost 544.56 and extends to the end of the line at milepost 545.83 (South Segment), a distance of 1.27 miles in Riverside County (both segments collectively referred to as the Line). UP also seeks exemption from the prior approval requirements of 49 U.S.C. § 10904 (offers of financial assistance procedures) and 49 U.S.C. § 10905 (public use conditions). Notice of the petition for exemption was served and published in the Federal Register on March 23, 2011 (76 Fed. Reg. 16,474-75).

UP states that it is not seeking authority to abandon the portion of the Riverside Industrial Lead between the North Segment and the South Segment (from milepost 543.88 to milepost 544.56), a distance of 0.68 miles (the Remaining Segment). Rather, UP asserts that the Remaining Segment will still be part of the UP railroad system and it will continue to serve the shippers on the Remaining Segment with BNSF Railway (BNSF) providing service via a haulage agreement and trackage rights, over a connection to be constructed between the Remaining Segment and the San Jacinto branch line, a line of railroad owned by the Riverside County Transportation Commission (RCTC). UP states that it will remain the primary railroad obligated to serve the Remaining Segment, and that it will retain access to the Remaining Segment via a trackage rights agreement with the RCTC. According to UP, the reconfiguration of the operation of the Line and the Remaining Segment is in the nature of a track relocation.

The petition for exemption raises issues that require consideration by the Board. Therefore, the Board seeks additional, clarifying information regarding the proposed abandonment and the plan for preserving common carrier service over the Remaining Segment. The Board directs UP to file, by May 13, 2011, supplemental information as indicated below:

Preservation of common carrier service over the Remaining Segment. Currently, there are active shippers on the Remaining Segment whose rail traffic UP carries over the North Segment. As discussed generally above, UP intends to preserve common carrier service over the Remaining Segment by way of a combination of trackage rights, a new connection between the RCTC line and the Remaining Segment, and a haulage agreement with BNSF. Specifically, UP proposes to reroute overhead traffic from the North Segment to a new connection to be constructed between the Remaining Segment and the RCTC's San Jacinto line. According to UP, rail service to shippers located on the Remaining Segment will be protected by a contractual haulage agreement, with BNSF providing haulage service for UP. UP states that it has agreed to provide BNSF trackage rights from the new connection to the shippers located on the Remaining Segment. UP also asserts that the RCTC has agreed to grant, or cause to be granted, overhead trackage rights to UP over the San Jacinto line to the new connection.

Because agency approval is not required for the initiation or termination of haulage agreements,¹ to preserve its common carrier service to the Remaining Segment, UP will need to retain the ability to serve the Remaining Segment itself, in the absence of BNSF haulage. The petition indicates that UP would retain the ability to operate over the Remaining Segment and would obtain overhead trackage rights over the new connection to be constructed between the Remaining Segment and RCTC's San Jacinto line and over the San Jacinto line itself. The petition does not make clear, however, how UP could access the remainder of its rail network from the San Jacinto line. UP is directed to explain in detail how its plan to retain service to the Remaining Segment would permit UP trains to reach the Remaining Segment from UP's rail network following abandonment of the North and South Segments.

BNSF's Operating Rights. As noted above, BNSF will provide service to shippers on the Remaining Segment via a haulage agreement and trackage rights. UP is directed to provide additional specific information regarding the type of operating rights BNSF has over the San Jacinto branch line, and how these rights were acquired.

Map. UP is directed to furnish a map, color-coded and clearly labeled to identify the location and extent of the contemplated BNSF trackage rights, the location and extent of the contemplated UP trackage rights, the location of the contemplated connection between the Remaining Segment and the RCTC San Jacinto line, the BNSF mainline switch near Highgrove, Cal., referenced in the petition, and the point at which traffic for shippers on the Remaining Segment handled via BNSF haulage will be handed off between UP and BNSF.

Inconsistencies in the Petition for Exemption. In a number of respects, information discussed by UP in its petition differs from RCTC's understanding, as reflected in its support letter attached to the petition. The Board requests that UP address and clarify the following issues:

¹ Phila. Belt Line R.R. Co.—Petition for Declaratory Order, FD 35345 (STB served Aug. 4, 2010); Waterloo Ry. Co.—Adverse Aban.—Lines of Bangor & Aroostook R.R. Co. & Van Buren Bridge Co. In Aroostook Cnty., Me., AB-124 (Sub-No. 2) (STB served May 3, 2004).

First, UP states that there are 2 active shippers, Sigma Stretch and Lehigh Cement Company, located on the Riverside Industrial Lead. In its September 29, 2010, support letter appended to the petition, however, RCTC states that, at least as of the date of that letter, 5 active shippers remain on the Riverside Industrial Lead: the 2 identified by UP, as well as Alpha Industries, CEMEX, and Omega Plastics. UP is directed to clarify the status of the other 3 shippers named in the RCTC letter.

Second, the record indicates an apparent misunderstanding regarding the length of the North Segment abandonment and the future location of the connection between the Remaining Segment and RCTC's San Jacinto line. In its support letter, RCTC describes the North Segment as 4.41 miles long, extending from milepost 540.15 to milepost 544.56, and states that the connection will be built at milepost 544.56; UP, however, states that the North Segment is 3.73 miles in length, between mileposts 540.15 and 543.88, and that the new connection will be located at milepost 543.88. UP is directed to clarify this issue.

UP is directed to submit the supplemental information described above by May 13, 2011. Interested persons may respond to UP's supplemental information by May 18, 2011.

It is ordered:

1. UP shall submit the supplemental information described in this decision by May 13, 2011. Interested persons may respond to UP's supplemental information by May 18, 2011.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.