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SERVICE DATE - JULY 18, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 173X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN MCLENNAN COUNTY, TX

Decided: July 16, 2001

By petition filed on March 30, 2001, the 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 line of railroad known as the Gatesville Industrial Lead, extending from milepost 685.90 to the end of the line at milepost 686.60 at Atco (Waco), TX, a distance of 0.70 miles in McLennan County, TX. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (66 FR 20173) on April 19, 2001, instituting an exemption proceeding. We will grant the exemption, subject to standard employee protective conditions and an environmental condition.

According to UP, the only shipper that uses the line, Lehigh Portland Cement Company (Lehigh), supports the abandonment.<sup>1</sup> UP states that Lehigh shipped 782 carloads in 1999 and 848 carloads in 2000, and that the shipper intends to acquire the abandoned line and use it as an industrial track to expand its loading capabilities at its facility in Waco. UP claims that there are no indications that there will be sufficient future traffic generated on the line from additional shippers to justify the costs necessary for it to continue rail operations.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find 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 an 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 an abandonment application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will

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<sup>1</sup> UP submitted a letter of support from Lehigh with its petition. UP also certifies that it served a copy of its petition on Lehigh.

also foster sound economic conditions and encourage efficient management by relieving UP of the costs of owning, maintaining, and operating the line [49 U.S.C. 10101(5), and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Because the line's only shipper supports UP's abandonment and intends to acquire the abandoned track for use as an industrial track, we find that regulation is not necessary to protect shippers from an abuse of market power. Nevertheless, to ensure that Lehigh is informed of our action, we will require UP to serve a copy of this decision on the shipper within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

UP has submitted an environmental 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 action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental 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 May 29, 2001, recommending that no environmental conditions be imposed. In a comment submitted on June 1, 2001, the Texas Natural Resource Conservation Commission (TNRCC) asks that UP take necessary steps to ensure that best management practices are used to control runoff from construction sites to prevent detrimental impact to surface and ground water. SEA therefore recommends a condition requiring that UP consult with TNRCC prior to salvage to develop best management practices to mitigate impacts to surface and ground water. We will adopt the condition recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note, however, that no one has sought a public use condition, and none will be imposed.<sup>2</sup>

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<sup>2</sup> Public use requests were due by May 9, 2001, 20 days after publication of the notice of the petition in the Federal Register.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment 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 (1979), and subject to the condition that, prior to salvage, UP consult with TNRCC to develop best management practices to mitigate impacts to surface and ground water.

2. UP is directed to serve a copy of this decision on Lehigh within 5 days after service 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)<sup>3</sup> to allow rail service to continue must be received by petitioner and the Board by July 27, 2001, 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 a \$1,000 filing fee. 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 August 17, 2001. Petitions to stay must be filed by August 2, 2001, and petitions to reopen must be filed by August 13, 2001.

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 July 18, 2002, and there are no 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 not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

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<sup>3</sup> See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997).

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

Vernon A. Williams  
Secretary