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SERVICE DATE - JULY 14, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 163X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN LAMAR
AND FANNIN COUNTIES, TX

Decided: July 10, 2003

The Union Pacific Railroad Company (UP) and The Texas Northeastern Division, Mid-Michigan Railroad, Inc. (TNER), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for UP to abandon and TNER to discontinue service over a 33.5-mile portion of the Bonham Subdivision between milepost 94.0, near Paris, and milepost 127.5, east of Bonham, in Lamar and Fannin Counties, TX. Notice of the exemption was served and published in the Federal Register on May 19, 2003 (68 FR 27142).¹

The exemption was scheduled to become effective on June 18, 2003, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Fannin Rural Rail Transportation District (FRRTD), a political subdivision of the State of Texas, to purchase the entire line. Under 49 CFR 1152.27(c)(2)(i), this filing automatically stayed the effective date of the exemption until June 28, 2003. By decision served on June 18, 2003, the time period for FRRTD to file an OFA was extended until June 23, 2003, and the effective date of the exemption was postponed until July 3, 2003. On June 20, 2003, FRRTD timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$496,314. By decision served on June 25, 2003, the effective date of the exemption was postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on May 23, 2003. In the EA, SEA states that the Texas Natural Resource Conservation Commission (TNRCC) concluded that the proposed abandonment would not result in significant long-term environmental impacts as long as construction and waste disposal activities are completed in accordance with applicable Federal, state and local environmental permits and regulations. However, TNRCC recommended that UP take necessary steps to ensure that best management practices are used to control runoff from

¹ While the notice embraced the proposed discontinuance in STB Docket No. AB-364 (Sub-No. 8X), Texas Northeastern Division, Mid-Michigan Railroad, Inc.—Discontinuance of Service Exemption—In Lamar and Fannin Counties, TX, the environmental conditions discussed in this decision are imposed on the proposed abandonment.

construction sites during salvaging activities. Therefore, SEA has recommended a condition that addresses the use of appropriate best management practices.

Also, SEA states that the National Geodetic Survey (NGS) has identified 27 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that UP provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy the 27 geodetic station markers so that plans can be made for their relocation.

Finally, SEA states that the Texas Historical Commission (the State Historic Preservation Office or SHPO) has determined that the line may have historical significance. The SHPO states that the line exhibits distinctive engineering features, including the use of 85-pound rails, a unique, regional bridge construction method, and historic train stations at Bonham and Paris, TX. Accordingly, SEA recommends that a condition be imposed requiring UP to retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

Comments on the EA were due by June 6, 2003. No comments were received. Accordingly, the conditions recommended by SEA in the EA will be imposed.

SEA, in its EA, has indicated that the right-of-way may be suitable for other public use following abandonment. By letter filed on June 6, 2003, the Texas Department of Transportation (TXDOT) indicated its intent to enter into negotiations with UP to "rail-bank" the subject line for a public use condition should negotiations between UP and FRRTD fail. It is unclear from this filing whether TXDOT is seeking a public use condition under 49 CFR 1152.28 or a trail use/rail banking condition under 49 CFR 1152.29.

To negotiate with UP for acquisition of the right-of-way for use as a trail, TXDOT must submit to the Board a request for issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d). This request must include a statement indicating its willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, and an acknowledgment that it must continue to meet its responsibilities and that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. See 49 CFR 1152.29. Trail use requests may be accepted as long as the Board retains jurisdiction over the involved right-of-way and the carrier is willing to enter into negotiations.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public purposes under 49 U.S.C. 10905. Under that provision, the Board may

prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period requested. See 49 CFR 1152.28.

TXDOT has not satisfied the requirements for a public use condition or for a NITU and, therefore, their imposition would not be appropriate at this time. Moreover, an OFA takes priority over any requests for a NITU or for a public use condition; accordingly, action on any such requests will be delayed until the OFA process has been completed.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the conditions that UP: (1) use best management practices to control runoff during salvaging activities; (2) provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy the 27 geodetic station markers so that plans can be made for their relocation; and (3) retain its interest in and take no steps to alter the historic integrity of the right-of-way until completion of the section 106 process of the NHPA.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary