

29293
EB

SERVICE DATE - JULY 15, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 120X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT AND DISCONTINUANCE
OF SERVICE EXEMPTION--IN WARREN COUNTY, IA

Decided: July 13, 1998

By petition filed on March 27, 1998, 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: (1) abandon a line of railroad owned by UP known as the Carlisle Branch, extending from milepost 368.3 near Carlisle, IA, to milepost 379.13 near Indianola, IA, a distance of 10.83 miles; and (2) discontinue operations over a portion of the Carlisle Branch from milepost 379.13 to the end of the line at milepost 379.98 in Indianola, a distance of 0.85 mile, a total distance of 11.48 miles in Warren County, IA.¹ Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (63 FR 18966-67) on April 16, 1998, instituting an exemption proceeding. A request for issuance of a notice of interim trail use (NITU) and for imposition of a public use condition was filed by the cities of Carlisle and Indianola, the Warren County Conservation Board, and the Iowa Natural Heritage Foundation (Agencies). The United Transportation Union seeks the imposition of labor protective conditions. We will grant the exemption, subject to trail use, public use, an historic preservation condition, an environmental condition, and standard employee protective conditions.

BACKGROUND

According to petitioner, there are two rail customers, both located at Indianola, that have used the line in the past two years: Heartland Coop and Jerico Services. UP avers that the rail traffic on the line totaled 21 carloads of chemicals for the year 1997 (14 carloads of fertilizer for Heartland Coop and 7 carloads of brine for Jerico Services). UP projects a total of 21 carloads to move over the line in the forecast year. According to UP, service is provided on the line on an as-needed basis, which is seldom more than once a month. UP indicates that all rail traffic to or from the line is interchanged at Carlisle on the railroad's Des Moines-Kansas City main line, which runs in a north-south direction. UP further states that there is no overhead traffic on the line because it ends at Indianola. Petitioner adds that alternative transportation service is available through motor carriers over U.S. Highway 69, a north-south highway, or Iowa Highway 92, an east-west highway, both of which serve Indianola.

¹ UP states that it owns and operates the line between milepost 368.3 and milepost 379.13, and that it operates over a line segment, between milepost 379.13 and the end of the line at milepost 379.98, which is owned by shipper Heartland Coop.

UP estimates the line's net liquidation value at \$294,168. UP also estimates that its operation of the line in the forecast year would result in an operating loss of \$51,423, with normalized maintenance included, and that it would incur an annual opportunity cost in the forecast year of \$37,700 if the railroad were to continue to own the line. UP argues that the proposed abandonment and discontinuance is justified in that: (1) freight revenues from local traffic on the line are insufficient to justify operation and the expenses involved in maintaining the line; and (2) there is no reasonable prospect that traffic and revenue will ever increase sufficiently in the foreseeable future to justify operation and retention of the line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned and operations may not be discontinued 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 the 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 and discontinuance application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving UP of the costs of owning and maintaining the line and allowing it to apply its assets more productively elsewhere on its system. [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. The two shippers on the line have not objected to the proposed abandonment and discontinuance, have used the line only sporadically in 1997 with rail traffic totaling 21 carloads, and appear to have adequate transportation alternatives available to them.² Nevertheless, to ensure that shippers are informed of our action, we will require UP to serve a copy of this decision on Heartland Coop and Jerico Services within 5 days of the service date of this decision and to certify to us that it has done so.

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, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

² Given our market power finding, we need not determine whether the proposed abandonment/discontinuance is limited in scope.

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 abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on June 3, 1998.

In the EA, SEA indicated that the State Historical Society of Iowa has not yet completed its review pursuant to section 106 of the National Historic Preservation Act. SEA further indicated that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment.

SEA, therefore, recommended that the following conditions be imposed on any decision granting abandonment/discontinuance authority: (1) that UP retain its interest in and take no steps to alter the historic integrity of the 12 bridges on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) that UP provide a minimum of 90 days' notice to NGS before engaging in salvage activities on the line.

No comments to the EA were filed by the June 26, 1998 due date. We will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment and discontinuance, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As stated, the Agencies request that interim trail use/rail banking be imposed under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). They have submitted a statement of willingness to assume financial responsibility for the right-of-way, and have acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. By letter filed April 8, 1998, UP states that it is agreeable to negotiating with the Agencies for trail use.³ The Agencies' request complies with the requirements of 49 CFR 1152.29 and UP is willing to enter into negotiations. Therefore, we will issue a NITU for the segment of line between milepost 368.5 and milepost 379.13. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

³ UP states that the NITU would not include a 0.2-mile segment of track at Carlisle between milepost 368.3 and milepost 368.5 because that trackage would be left in place after abandonment and used for equipment purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986) (Trails), offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 U.S.C. 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

SEA has indicated in its EA that the right-of-way may not be suitable for other public use following abandonment. As noted above, the Agencies have also requested that a 180-day public use condition be imposed. The Agencies ask that: (1) UP be precluded from disposing of the rail corridor, including the tracks, ties and signal equipment, except for public use on reasonable terms;⁴ and (2) UP be barred from removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels. The Agencies state that the corridor is located near a state highway which would make an excellent transportation and recreation trail, and conversion of the property to trail use is in accordance with local, state and regional plans; that the corridor provides important wildlife habitat and greenspace and its preservation as a trail is consistent with that end; and that the trail-related structures have considerable value for trail purposes. The Agencies indicate that the 180-day time period is needed to complete negotiations with UP.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The Agencies have met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition also will be imposed, commencing with the effective date of this decision and notice. If a trail use agreement is reached on a portion of the right-of-way, UP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use.

⁴ Although the Agencies have requested that UP be precluded from disposing of the rail corridor, including the tracks, ties and signal equipment, when imposing a public use condition the Board normally does not prevent a carrier from removing track and track materials. Because the Agencies have not shown a reason to depart from our normal practice, we will not do so here.

Therefore, with respect to the public use condition, UP is not required to deal exclusively with the Agencies, but may engage in negotiations with other interested persons.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the above-described abandonment/discontinuance from the prior approval requirements of 49 U.S.C. 10903, subject to the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that UP shall: (1) retain its interest in and take no steps to alter the historic integrity of the 12 bridges on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (2) leave intact all of the right-of-way, including bridges, trestles, culverts and tunnels (but not track and track materials) for a period of 180 days from the effective date of this decision to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; (3) comply with the interim trail use/rail banking procedures set forth below for the segment of the line between milepost 368.5 and milepost 379.13; and (4) provide a minimum of 90 days' notice to NGS before engaging in salvage activities on the line.

2. UP is directed to serve a copy of this decision on Heartland Coop and Jerico Services within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, 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 the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the conditions imposed above are met.

7. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)⁵ to allow rail service to continue must be received by the railroad and the Board by July 24, 1998, 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).

8. 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.”**

9. Provided no OFA has been received, this exemption will be effective August 14, 1998. Petitions to stay must be filed by July 30, 1998, and petitions to reopen must be filed by August 10, 1998.

10. 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 15, 1999, 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.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

⁵ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).