30223 SERVICE DATE - AUGUST 18, 1999
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SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 135X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN ST. LOUIS COUNTY, MO
(KIRKWOOD INDUSTRIAL LEAD, KIRK JCT. TO BILLMAN SPUR)

Decided: August 11, 1999

By petition filed on April 30, 1999, 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 2.18-mile portion of the Kirkwood Industrial Lead extending from milepost 13.62 near Kirk Jct. to the end of the line at milepost 15.80 near Billman Spur, in St. Louis County, MO. The rail station of Billman Spur at milepost 15.30 is included in the proposed abandonment. Notice of the institution of an exemption proceeding was published in the Federal Register at 64 FR 27617 on May 20, 1999. On June 7, 1999, Von Hoffman Press (Von Hoffman) filed a protest, objecting to abandonment of the portion extending between milepost 13.62 and 14.20 that serves its Crestwood facility. A request for issuance of a notice of interim trail use (NITU) and a public use condition was filed by Trailnet, Inc. (Trailnet). The City of Crestwood also seeks imposition of a public use condition. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the petition, subject to public use and standard labor protective conditions, and will issue a NITU.

BACKGROUND

The Kirkwood Industrial Lead is a stub-ended rail line that connects to the UP main line which runs between St. Louis and Jefferson City, MO. Near milepost 13.62 the line crosses the tracks of The Burlington Northern and Santa Fe Railway Company (BNSF). UP seeks to abandon the line because, it asserts, the revenues are insufficient to justify the costs of operation and maintenance. These costs include the cost for maintenance of 5 signaled road crossings. The railroad says that there is no reasonable prospect that traffic and revenue will increase sufficiently in the foreseeable future to justify continued operation and maintenance. The line serves one shipper, Von Hoffman, located at milepost 14.20.

Service has been provided on an as-needed basis by a local switch train. In 1998, the train made 10 trips to deliver 14 carloads of traffic for the shipper. UP asserts that alternative transportation is available to the shipper over an extensive network of highways in the area.

Von Hoffman claims that its transportation costs would increase 62%, or $29,764 in the next year, if trucks were used for traffic now received by rail. Von Hoffman further claims that this substantial increase in costs would negatively impact any decision to increase production at its

Crestwood facility. Using trucks instead of rail, Von Hoffman says, would substantially increase its transportation costs and decrease the value of its property.

TRAFFIC, REVENUES, AND COSTS

UP Witness Frank Zitek states that Von Hoffman, a manufacturer of school books, once used its Crestwood facility for manufacturing books, but now uses it as the company's corporate headquarters and as a production facility for book covers. Mr. Zitek says the majority of Von Hoffman's manufacturing is performed at its Jefferson City facility, to which UP also provides rail service in excess of 600 rail cars per year. According to Mr. Zitek, the only UP rail traffic that has moved to the Crestwood facility has been overflow cars of material destined for Von Hoffman's Jefferson City plant.

In the base year (calendar year 1998), UP claims that it handled 14 cars bound for Von Hoffman's Crestwood facility, of which 11 were waybilled in a 4-day time frame in March due to a Michigan supplier shipping faster than Von Hoffman's Jefferson City plant could absorb. To minimize demurrage charges at Jefferson City, UP says, Von Hoffman had the overflow cars sent to the Crestwood facility for truck movement to its Jefferson City facility. Mr. Zitek says that he has sought to remedy the occasional mismatch between supplier shipping frequency and the receiving capabilities at Jefferson City.

UP Witness Clarence Adamson states that almost all traffic received at Von Hoffman's Crestwood facility is in a reciprocal switch service for which UP receives $130 per car, but for which no line haul revenue is received. The rail cars carry printing paper received from other railroads (usually BNSF) at St. Louis. If UP is the line haul carrier, it would receive $1,797 per car for service to Von Hoffman's Crestwood facility.

Mr. Adamson indicates that traffic for Von Hoffman consisted of 4 carloads in 1996, 8 carloads in 1997 (7 in switch service and 1 in linehaul service); and 14 carloads in 1998 (13 in switch service and 1 in linehaul service). UP's revenues totaled $3,487 for the base year (January-December, 1998) and $2,707 in revenues for the forecast year (April 1999-March 2000). UP explains that the increase in traffic to the Crestwood facility in 1998 resulted from the diversion of cars that were headed to the Van Hoffman Jefferson City plant but which could not be accommodated. UP says that this diversion of cars is not expected to be repeated. Therefore, UP projects the traffic in the forecast year to be equivalent to the 1997 level (8 cars). We have restated UP's costs and revenue as shown in the Appendix. We have, however, calculated revenues for the forecast year at the 14-car level shown for the base year. This is the highest traffic level that the record will support. The only other adjustment we made to UP's cost evidence was to use the current 15.6% nominal rate of return.[1] Our restatement of the cost evidence for the entire 2.18-mile

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[1] The 15.6% pre-tax nominal cost of capital rate is determined from the after-tax cost of capital (continued...)

line shows that the line will generate an operating loss of $41,397 and an opportunity cost of $49,381 for a total forecast year avoidable loss of $90,778 and an estimated subsidy payment of $90,778.

UP argues that it must spend more to operate the line than it can earn from the revenues attributable to the line and, therefore, there is a burden on interstate commerce. In protesting the abandonment, Von Hoffman does not object to UP's abandoning its service between milepost 14.20 and the end of the line at milepost 15.80. Rather, the shipper objects to UP's justifying abandonment of the .58-mile segment of track to the Crestwood facility based on revenues and costs attributable to abandonment of the entire 2.18 miles of rail line. Protestant urges that UP be made to justify abandonment of the .58 miles of track by itself. Protestant states that maintaining .58 miles would obviously be less expensive than maintaining 2.18 miles. Protestant, however, offers no evidence that the .58-mile segment would be profitable if it remained in service.

When we examine the .58-mile segment by itself, we find that the avoidable costs alone (excluding opportunity costs) would exceed the revenues derived from operations. UP claims a cost for maintenance-of-way and structures (MOW) of $41,872 for the entire line. However, because we cannot determine from the record just where the 5 road crossings are located on the line, we will not include the cost of $29,364 for their maintenance in our calculation of MOW costs for the .58-mile segment. Accordingly, we have prorated the remaining MOW costs and calculate a MOW cost of $3,328 attributable to the .58-mile segment. Adding all other on-branch and off-branch costs[2] to the adjusted MOW results in an avoidable loss from operation of $2,853 for the .58 miles.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior 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.

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[1](...continued)
(10.7%). See Railroad Cost of Capital--1998, STB Ex Parte No. 558 (Sub-No. 2) (STB served May 17, 1999).

[2] On-branch costs are $93 for maintenance of equipment (including depreciation); $841 for transportation; $44 for freight car costs; $205 for return on value - locomotives; and $48 for return on value - freight cars. Off-branch costs are $489 for off-branch costs other than return; $191 for return on value - freight cars; and $1,101 for switch cars. The total additional on-branch and off-branch costs are thus $3,012. [$3,012 (additional on-branch and off-branch costs) + $3,328 (MOW costs) - $3,487 (revenues) = $2,853 (avoidable loss).]

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. Moreover, an exemption will foster sound economic conditions and encourage efficient management by allowing UP to avoid operating and maintaining an uneconomic rail line and to use its assets more productively elsewhere on its system [49 U.S.C. 10101(3), (5) and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. Von Hoffman, the only shipper that would be affected by the abandonment, seeks retention by UP of a .58-mile portion of the line proposed for abandonment. Von Hoffman does not oppose abandonment of the remaining portion of line. When we examine the record, however, the evidence demonstrates that continued operation of either the 2.18-mile or .58-mile portions would be a burden on the carrier and interstate commerce. UP would incur an operating loss of $41,397 to operate the 2.18-mile segment and an operating loss of at least $2,853 to operate the .58-mile portion. Under either scenario, UP's continued service would not be economically justified.

Because Von Hoffman moved most of its manufacturing from Crestwood to its Jefferson City plant, this abandonment will have little impact on it. Any adverse effects will be minor and do not outweigh the detriment to the public interest of continued uneconomic operations. Chicago & N.W. Transp. Co.--Aband., 354 I.C.C. 1, 7 (1977). To ensure that the shipper is informed of our decision, we will direct UP to serve a copy of this decision on Von Hoffman within 5 days of the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Moreover, the abandonment would benefit the community interests because it would eliminate road crossings, which are hazardous to traffic and pedestrians. We find that UP has met the exemption criteria for the proposed abandonment.

We also note that 49 U.S.C. 10904 provides a mechanism for those who want to continue rail service that the Board has authorized to be discontinued or abandoned. Under section 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an offer of financial assistance (OFA) to acquire a line or subsidize the losses of the existing operator. Should area shippers or any other interested party determine that continued rail service over the line is in their best interest, they may avail themselves of the section 10904 procedures.

LABOR PROTECTION

UTU requests the imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a 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.

ENVIRONMENTAL ISSUES

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 its data, and analyzed the probable effect of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on June 29, 1999, recommending that no environmental or historic conditions be imposed on the abandonment. No comments have been received in response to the EA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or conservation of energy resources.

TRAIL USE

Trailnet requests issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d), for the right-of-way involved in this proceeding. They ask that UP be precluded from disposing of trail-related structures (e.g., bridges, trestles, culverts and tunnels) on the line. Trailnet requests a 180-day period to negotiate with UP for acquisition of the right-of-way, stating that the corridor would make an excellent recreational trail in accordance with local plans. As required, Trailnet submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service in compliance with 49 CFR 1152.29. By letter filed May 27, 1999, UP indicated its willingness to negotiate a trail use agreement with Trailnet.

The criteria for imposing trail use and rail banking have been met. Accordingly, we will accept the trail use request and UP's response and issue a NITU. The parties may negotiate an agreement during the 180-period prescribed below. If the parties reach a mutually acceptable final agreement, further Board approval is not necessary. If no agreement is reached within 180 days, UP may fully abandon the line, provided the conditions imposed in this proceeding are met. 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

PUBLIC USE

SEA indicates in its EA that the right-of-way may be suitable for other public use after abandonment. Both Trailnet and Crestwood request imposition of a 180-day public use condition. Trailnet seeks to acquire the entire right-of-way for interim trail use in accordance with local plans. Crestwood seeks to acquire all or a portion of the right-of-way to protect and enhance the city-owned

"Sappingon House Complex" which is listed in the National Register of Historic Places. Both Trailnet and city of Crestwood submit that 180 days are required to negotiate with UP.

Persons who file under the Trails Act also may file for public use under 49 U.S.C. 10905. When the need for both is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). Trailnet and city of Crestwood have met the criteria for imposing a public use condition 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 time period. 49 CFR 1152.28(a)(2). Accordingly, a 180-day public use condition also will be imposed. 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, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with Trailnet and the Crestwood but may engage in negotiations with other interested persons.

The parties should note that operation of the trail and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, 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 CFR 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 and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail and public use negotiations may proceed.

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 by UP of the above-described 2.18-mile rail line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) the condition that UP leave intact all of the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels (but not track or 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; and (3) the requirement that UP comply with the terms and conditions for implementing interim trail use/rail banking, as set forth below.

2. UP must serve a copy of this decision on Von Hoffman within 5 days after the service date of this decision and 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 from 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 in this proceeding are met.

7. An OFA under 49 CFR 1152.27(c)(1)[3] to allow rail service to continue must be received by the railroad and the Board by August 27, 1999, 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 on September 17, 1999. Petitions to stay must be filed by September 2, 1999. Petitions to reopen must be filed by September 13, 1999.

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 August 18, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any 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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[3] 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).

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

Vernon A. Williams
Secretary

APPENDIX

	Applicant's Base Year Figures	Applicant's Forecast Year Figures	Restated Forecast Year Figures
1. Freight Orig. and/or Term. on Branch	$3,487	$2,707	$3,487
2. Bridge Traffic	0	0	0
3. All Other Revenue and Income	0	0	0
4. Total Attributable Revenue (Ls. 1 thru 3)	**$3,487**	**$2,707**	**$3,487**
5. On-branch Costs:			
a. Maintenance-of-Way and Structures	$41,255	$41,872	$41,872
b. Maintenance-of-Equipment (Including Depreciation)	93	93	93
c. Transportation	822	841	841
d. General & Administrative	0	0	0
e. Deadheading, Taxi and Hotel	0	0	0
f. Overhead Movement	0	0	0
g. Freight Car Costs (Other Than Return)	44	44	44
h. Return on Value - Locomotives	205	205	205
i. Return on Value - Freight Cars	48	48	48
j. Revenue Taxes	0	0	0
k. Property Taxes	0	0	0
l. Total (Ls. 5a thru 5k)	**$42,467**	**$43,103**	**$43,103**
m. Holding Gains - Locomotives	0	0	0
n. Holding Gains (Loss) - Freight Cars	0	0	0
o. Net On-br Costs (Ls. 5l - 5m & 5n)	**$42,467**	**$43,103**	**$43,103**
6. Off-branch Costs:			
a. Off-Branch Costs (Other Than Return)	$483	$489	$489
b. Return on Value - Freight Cars	191	191	191
c. Holding Gains - Freight Cars	0	0	0
d. Switch Cars	1,101	606	1,101
e. Net Off-br Costs (Ls. 6a+6b - 6c)	**$1,775**	**$1,286**	**$1,781**
7. Total Avoidable Costs (L. 5o + L. 6d)	**$44,242**	**$44,389**	**$44,884**
8. Rehabilitation	$0	$0	$0
9. Administrative Costs (Subsidy Year Only)	35	27	0
10. Casualty Reserve Account	0	0	0
11. Total Subsidization Cost (Ls. 8 thru 10)	**$35**	**$27**	**$0**
12. Valuation of Road Properties			
a. Working Capital	$1,693	$1,719	$1,719
b. Income Tax Consequences	(221,404)	(220,856)	(220,856)
c. Net Liquidation Value	598,390	596,907	596,907
d. Total (Ls. 12a thru 12c)	**$378,679**	**$377,770**	**$377,770**
13. Nominal Rate of Return	17.5%	17.5%	15.6%
14. Nominal Return on Value (L. 12d x L. 13)	$66,269	$66,110	$58,932
15. Holding Gain (Loss)	$0	$9,551	$9,551
16. Total Return on Value (L. 14 - L. 15)	**$66,269**	**$56,559**	**$49,381**
17. Avoidable (Loss) or Profit from Operations (L. 4 - l. 7)	**($40,755)**	**($41,682)**	**($41,397)**
18. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&16)	**($107,024)**	**($98,241)**	**($90,778)**
19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)	**($107,059)**	**($98,268)**	**($90,778)**