

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 132X)

UNION PACIFIC RAILROAD COMPANY  
– ABANDONMENT EXEMPTION –  
IN RIO GRANDE AND MINERAL COUNTIES, CO

Decided: December 19, 2003

In a decision served on May 11, 1999, the Board approved the sale of a 21.6-mile rail line known as the Creede Branch from Union Pacific Railroad Company (UP) to the Denver & Rio Grande Railway Historical Foundation (D&RGHF) in accordance with the offer of financial assistance (OFA) procedures under 49 U.S.C. 10904 and 49 CFR 1152.27. On November 26, 1999, the City of Creede, CO (City), which lies along the Creede Branch, filed a petition to reopen UP's abandonment exemption and the OFA line sale to D&RGHF. On May 24, 2000, the Board denied the City's petition to reopen, finding that the City had not satisfied the criteria necessary for reopening administratively final proceedings. The sale of the line was also consummated on May 24, 2000.

On July 2, 2003, the City filed a petition for declaratory order in STB Finance Docket No. 34376, City of Creede, CO – Petition for Declaratory Order, pursuant to an order of the U.S. District Court for the District of Colorado (District Court)<sup>1</sup> referring to the Board three questions involving federal preemption of the City's zoning laws as applied to D&RGHF. The District Court also ordered the parties to submit to the Board, within 80 days of the court's order, all portions of the court's record relevant to the preemption issue. D&RGHF made its submission to the Board on July 21, 2003. After requesting two extensions from the District Court, the City submitted portions of the court record, totaling over 400 pages, on October 14, 2003. In addition to the documents themselves, the City tendered a 30-page pleading arguing that the Board should void the authorization in this abandonment exemption proceeding for sale of the line to D&RGHF under the OFA provisions. Although the City did not caption its pleading as a petition to reopen this proceeding, a decision served on November 3, 2003, treated it as such because in it the City had asked the Board to review its decision approving the prior OFA purchase based on new evidence. The decision also extended the due date for replies from both D&RGHF and UP until December 3, 2003, and held the declaratory order proceeding in abeyance pending disposition of the petition to reopen.

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<sup>1</sup> City of Creede v. Denver & Rio Grande Ry. Historical Found., No. 01-RB-318 (CBS) (D. Colo. May 9, 2003).

In a decision served on November 26, 2003, the Board extended the due date for filing replies to the City's petition to reopen the proceeding to December 19, 2003.

By letter filed on December 18, 2003, UP requests a 30-day extension of the current filing date. UP states that the attorney representing it in this matter, Robert Opal, has undergone recent surgery, necessitating the filing delay. UP adds that neither the City nor D&RGHF opposes the extension request.

The request is reasonable and unopposed. Therefore, it will be granted.

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

It is ordered:

1. The due date for replies to the City's petition to reopen this proceeding is extended to January 20, 2004.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary