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SERVICE DATE - SEPTEMBER 30, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 116X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--  
IN SALT LAKE COUNTY, UT

Decided: September 28, 1998

By petition filed June 12, 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 abandon three rail line segments as follows: (1) the Provo Subdivision, between milepost 799.0 and milepost 800.26 (1.26 miles); (2) the Passenger Line Industrial Lead, between milepost 782.32 and milepost 782.79 (0.47-mile); and (3) the Provo Subdivision Running Track Passenger Line, between milepost 744.20 and milepost 745.48 (1.28 miles), a total distance of 3.01 miles in Salt Lake City, Salt Lake County, UT. UP also seeks to be exempted from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (63 FR 36286-87) on July 2, 1998, instituting an exemption proceeding. The United Transportation Union seeks the imposition of labor protective conditions. We will grant the exemption, subject to two environmental conditions and standard employee protective conditions.

BACKGROUND

According to UP, there are four shippers on the line segments: Cereal Food Processors (CFP), Tenneco Packaging (Tenneco), Holnam, Inc. (Holnam) and Mountain Cement Company (Mountain Cement).<sup>1</sup> CFP and Holnam are located adjacent to the Provo Subdivision, Mountain Cement is located adjacent to the Passenger Line Industrial Lead, and Tenneco is located adjacent to the Provo Subdivision Running Track Passenger Line. Shippers CFP and Mountain Cement will continue to receive rail service from UP: CFP will continue to be served from a new siding and Mountain Cement will acquire some of the abandoned track, which it will use as industrial track for continued rail service. Shippers Holnam and Tenneco will no longer use UP rail service.

The National Railroad Passenger Corporation (Amtrak) also uses the Provo Subdivision Running Track Passenger Line. According to UP, Amtrak has agreed to relocate its passenger

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<sup>1</sup> All four shippers have filed letters supporting the petition.

operations to the intermodal transportation facility in the Gateway area which is located adjacent to another UP line.<sup>2</sup> Any overhead traffic can and will be rerouted to an alternate line.

UP states that the commodities transported over these line segments consist of wheat, flour and other milled grain products, pulpboard or fibreboard, portland cement, railway equipment, and scrap paper. In 1996, 4,068 carloads of traffic moved inbound and 1,877 carloads moved outbound over the line, totaling 5,945 carloads; in 1997, the numbers were 3,347 carloads inbound and 1,649 carloads outbound, totaling 4,996 carloads.<sup>3</sup> UP states that the wheat, flour, and cement traffic will continue to move by rail to and from the area after abandonment. UP indicates that the line segments do not require any rehabilitation to meet class 1 FRA track standards. Petitioner adds that the Provo Subdivision currently consists of 133-pound rail, the Passenger Line Industrial Lead consists of 131-pound rail, and the Provo Subdivision Running Track Passenger Line consists of 115-pound rail.

Petitioner states that the line segments are located on Salt Lake City streets within a city project area which is commonly referred to as the "Gateway Project." UP avers that it is seeking authority to discontinue operations and to abandon the segments because the underlying right-of-way is required for other public purposes, i.e., for the Gateway Project. The project requires, in part, the shortening of the viaducts at ground level at 500 West Street and construction of an intermodal transportation facility in the Gateway area. According to UP, the Utah Department of Transportation (UDOT) plans to: (1) reconstruct a segment of Interstate Highway 15 which requires demolition and reconstruction of the viaducts; and (2) shorten the viaducts in order to accommodate the Gateway Project. Petitioner indicates that the shortening of the viaducts and the redevelopment will require removal of portions of the trackage proposed for abandonment here.

UP states that it wants to promptly convey the right-of-way underlying the line segments to UDOT and the City. For this reason, petitioner indicates that it will not negotiate with any party for the transfer of the segments for trail use. In order to expedite the process, petitioner also seeks exemption from 49 U.S.C. 10904 and 10905, and requests that the exemptions from sections 10903-05 be made effective on the date after the date of service of this decision.

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we

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<sup>2</sup> In a letter filed July 22, 1998, Amtrak states that it does not oppose the petition, based on petitioner's representation that it will postpone consummation of the abandonment until such time as Amtrak is able to move to a new temporary station facility in Salt Lake City.

<sup>3</sup> If 3,347 and 1,649 are the correct carload figures for 1997, the total number would be 4,996, rather than 4,986, as the carrier indicated.

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 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 cost 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. Under the proposed exemption, petitioner will be able to consummate the abandonment more expeditiously and transfer the right-of-way to the City and UDOT for a redevelopment project.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. Abandonment of the segments is not opposed by any of the users and overhead traffic can and will be rerouted. Nevertheless, to ensure that all parties are informed of our action, we will require UP to serve a copy of this decision on the shippers on the line and on Amtrak 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 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, 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).

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, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on August 21, 1998.

In the EA, SEA stated that, following the abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. SEA further indicated that: (1) the State of Utah, Department of Environmental Quality, Division of Environmental Response and Remediation (DERR), has informed SEA that eight CERCLA<sup>4</sup> (superfund) sites are in close proximity to the rail

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<sup>4</sup> The Comprehensive Environmental Response, Compensation and Liability Act of 1980. 42 U.S.C. 9601-75.

segments proposed for abandonment;<sup>5</sup> and (2) the National Geodetic Survey (NGS) has identified three geodetic station markers along the rail segments and requests 90 days' notice to plan relocation of any markers which may be disturbed or destroyed.

SEA, therefore, recommended that the following conditions be imposed on any decision granting abandonment authority: (1) during salvage of the rail right-of-way, if any potentially hazardous CERCLA (superfund) sites should be uncovered, salvage should cease and DERR should be consulted; and (2) UP shall consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

No comments to the EA have been filed by the September 17, 1998 due date. We will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As previously noted, to expedite the post-abandonment transfer of the right-of-way needed by UDOT and the City, UP has requested that the abandonment be exempted from the OFA requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. It has also requested that the exemption be made effective on the date after the date of service of this decision.

Exemptions from 49 U.S.C. 10904-05 have been granted from time to time, but only when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.<sup>6</sup> Here UP has agreed to transfer the subject right-of-way to the City and

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<sup>5</sup> The information system established under CERCLA contains data on potentially hazardous waste sites that have been reported to the Environmental Protection Agency by states, municipalities, private companies, and private persons that are either proposed for, or are included on, the National Priorities List. According to SEA, DERR is not aware of any spills that have recently occurred in the right-of-way of the line segments, but DERR is aware that a roundhouse was once located in the area around 4th South Street and 6th West Street. DERR has also informed SEA that recent construction activities near 4th South Street uncovered several railroad-related burn pits, and it has been advised of a buried sludge pit in the vicinity of the historic roundhouse in the railroad corridor.

<sup>6</sup> See K&E Railway Company--Abandonment Exemption--In Alfalfa, Garfield, and Grant Counties, OK, and Barber County, KS, STB Docket No. AB-480X (STB served Dec. 31, 1996), slip op. at 4, citing Southern Pacific Transportation Company--Discontinuance of Service Exemption--In Los Angeles County, CA, Docket No. AB-12 (Sub-No. 172X), et al. (ICC served Dec. 23, 1994); Missouri Pacific Railroad Company--Abandonment--In Harris County, TX, Docket No. AB-3 (Sub-No. 105X) (ICC served Dec. 22, 1992); Chicago & North Western Transportation Company--Abandonment Exemption--In Blackhawk County, IA, Docket No. AB-1 (Sub-No.

(continued...)

UDOT for a valid public purpose, i.e., a major reconstruction project. Moreover, the shippers on the line segments and Amtrak do not oppose the abandonment and any overhead traffic moving over the line segments can and will be rerouted. There is therefore no overriding public need for continued rail service. On the other hand, imposition of the OFA procedures could delay the transfer of the line segments to UDOT and the City for pressing public use and jeopardize the timely completion of the project. Additionally, as a public use for the right-of-way here has already been established by agreement between UP, the City, and UDOT, there is no need for a public use condition in the circumstances. Accordingly, we will grant an exemption from the OFA and public use requirements of 49 U.S.C. 10904-05.

The evidence of record establishes that the proposed exemptions from 49 U.S.C. 10904-05 meet the criteria of 49 U.S.C. 10502. Applying the OFA or public use requirements, in this instance, is not necessary to carry out the rail transportation policy. Allowing the abandonment exemption to become effective expeditiously, without first being subject to these requirements, would minimize the need for Federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. We have already determined that regulation is not necessary to protect shippers from an abuse of market power.

We will also not provide any further opportunity for interested persons to file trail use/rail banking requests. Trail use/rail banking is voluntary and can only be implemented if an abandoning railroad agrees to negotiate an agreement. See section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). Here, UP has made it clear that it will not entertain trail use requests. Finally, we will also grant petitioner's request for expedited effectiveness of the exemptions granted here. The record supports a need for such expedition.<sup>7</sup> Accordingly, we will make the subject exemption effective on the service date of this decision.

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 from the requirements of 49 U.S.C. 10903-10905 the abandonment of the above-described line, subject to the employee protective conditions in

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<sup>6</sup>(...continued)  
226X), et al. (ICC served July 14, 1989); and Iowa Northern Railway Company--Abandonment--In Blackhawk County, IA, Docket No. AB-284 (Sub-No. 1X) (ICC served Apr. 1, 1988).

<sup>7</sup> In a letter filed July 29, 1997, the City points out that time is of the essence here as the Gateway Project is being completed in the midst of the design-build reconstruction of Interstate Highway 15 -- the largest public design-build project in the country's history.

Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that: (1) during salvage of the rail right-of-way, if any potentially hazardous CERCLA (superfund) sites should be uncovered, salvage should cease and DERR should be consulted; and (2) UP shall consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

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

3. This exemption will be effective September 30, 1998.

4. 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 September 30, 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