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SERVICE DATE - JANUARY 13, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 187X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN BOONE  
AND DALLAS COUNTIES, IA

Decided: January 10, 2003

By petition filed on September 25, 2002,<sup>1</sup> 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 approximately 12.2 miles of a line of railroad known as the Ankeny Subdivision, extending from milepost 341.1 near Slater to the end of the line at milepost 353.5 near Woodward (Equation 346.4=346.6) in Boone and Dallas Counties, IA. A request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by the Iowa Natural Heritage Foundation of behalf of the Boone and Dallas County Conservation Boards, the City of Perry, and the Iowa Trails Council (collectively, the Commenters). We will grant the exemption, subject to trail use, public use, environmental conditions and standard employee protective conditions.

BACKGROUND

The line proposed for abandonment was formerly main line of the Milwaukee Road that was purchased by Chicago and North Western Railway Company in 1982. The Chicago and North Western Railway Company later merged with UP, effective on October 1, 1995.

UP has served only one shipper on the line for the past several years. The shipper, West Central Cooperative (West Central), operates an elevator facility at Woodward, IA. West Central has shipped potassium chloride, urea, diammonium phosphate, and superphosphate from its facility, but it has generated very limited activity over the line in the past several years. West Central does not anticipate an increased need for rail service and supports the abandonment.<sup>2</sup>

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<sup>1</sup> Notice was served and published in the Federal Register on October 15, 2002 (67 FR 63728).

<sup>2</sup> UP submitted a letter in support from West Central.

UP states that the area proposed for abandonment is an agricultural area that is already being served by other existing elevator facilities. UP states that it is unaware of any other industry planning to locate along the line, that current traffic levels do not justify its continued operation and maintenance, and that there is no overhead traffic. Therefore, according to UP, there are no reasonable alternatives to abandonment of the line.

UP notes that there is a removable bridge asset on the line, the Ankeny Bridge structure, which could be utilized to improve capacity on another UP corridor. The bridge structure, located at milepost 349.3, could be used as a supplemental structure to the Kate Shelley Bridge, located at milepost 207.42 on UP's Boone Subdivision. UP states that re-using the existing spans from the Ankeny Bridge in this manner could save UP an estimated \$8,820,830. UP claims that the benefit of moving the Ankeny Bridge to the Boone Subdivision far outweighs any potential harm to affected shippers and communities from the proposed abandonment.

#### 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 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 here. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will permit relocation of the Ankeny Bridge to the Boone Subdivision, which could result in cost savings to UP, thereby enhancing UP's ability to compete with other rail carriers consistent with 49 U.S.C. 10101(4) and (5). An exemption will also foster sound economic conditions and encourage efficient management by relieving UP from the expense of retaining and maintaining a line that generates very little traffic and allowing UP to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Nor is regulation of the proposed transaction necessary to protect shippers from the abuse of market power because West Central, the sole shipper on the line, supports the abandonment and there are no prospects for future rail traffic. Nevertheless, to ensure that West Central is informed of our action, we will require UP to serve a copy of this decision and notice on West Central within 5 days of the service date and certify to us that it has done so. In light of 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 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 November 22, 2002.

In the EA, SEA noted that various concerns have been raised by the Iowa Department of Natural Resources (IDNR), the U.S. Army Corps of Engineers (Corps) and the State Historical Society of Iowa (SHPO). SEA recommends to the Board that it impose conditions on any decision granting abandonment authority that require UP to: (1) consult with IDNR to determine what permits may be required before abandonment activities can proceed; (2) consult with the Corps regarding maintenance requirements of the Ankeny Bridge and potential navigation hazards that could develop as the bridge structure ages if the bridge is retained; (3) consult with the Corps regarding the need to remove piers and footings that could result in navigation hazards if left in place and to review associated permitting requirements for any bridge, including the Ankeny Bridge, that will be removed from waters of the United States; (4) consult with the Corps regarding the release of soil contaminants that could result from the removal or disturbance of the rail line embankment in the vicinity of the Saylorville Reservoir; and (5) 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 National Historic Preservation Act, 16 U.S.C. 470f.<sup>3</sup>

No comments on the EA were filed by the December 20, 2002 due date. We will impose the conditions recommended by SEA. Accordingly, based on SEA's recommendation, 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.

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<sup>3</sup> The EA also recommended imposition of a condition that UP retain the integrity of the rail line until the National Geodetic Survey (NGS) had completed its review of the proposed abandonment and determined if any geodetic markers could be adversely affected. SEA notes that the lack of a response from NGS to the Environmental Report, which was delivered to NGS on August 5, 2002, and to the EA, which was served on November 22, 2002, indicates that there are no geodetic station markers on the line that would be adversely affected. Therefore, this condition will not be imposed.

On October 17, 2002, the Commenters filed a request for issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The Commenters have jointly 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 of the right-of-way for rail service as required under 49 CFR 1152.29. By facsimile received on December 23, 2002, UP states that it is willing to negotiate for interim trail use. Because the Commenters' request complies with the requirements of 49 CFR 1152.29 and UP is willing to enter into trail use negotiations, we will issue a NITU for the subject line. 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.

SEA has indicated in its EA that, if abandonment and salvage of the line does take place, the right-of-way may be suitable for other public use. The Commenters request imposition of a 180-day public use condition to allow them to study recreational uses for the right-of-way. The Commenters request that UP be prohibited from: (1) disposing of the rail corridor, including tracks, ties and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts and tunnels.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). 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 Commenters 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 will be imposed on the line to be abandoned, commencing from the effective date of this decision, to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use.

The parties should note that operation of the trail use 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 use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes 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 line subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that UP shall: (1) leave intact all of the right-of-way, including tracks, ties, and signal equipment (except for public use on reasonable terms) bridges, trestles, culverts, and tunnels 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; (2) comply with the terms and conditions for implementing interim trail use/rail banking as set forth below; (3) consult with IDNR to determine what permits may be required before abandonment activities can proceed; (4) consult with the Corps regarding maintenance requirements of the Ankeny Bridge and potential navigation hazards that could develop as the bridge structure ages if the bridge is retained; (5) consult with the Corps regarding the need to remove piers and footings that could result in navigation hazards if left in place and to review associated permitting requirements for any bridge, including the Ankeny Bridge, that will be removed from waters of the United States; (6) consult with the Corps regarding the release of soil contaminants that could result from the removal or disturbance of the rail line embankment in the vicinity of the Saylorville Reservoir; and (7) 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 National Historic Preservation Act, 16 U.S.C. 470f.

2. UP is directed to serve a copy of this decision and notice on West Central within 5 days after the service date of this decision and notice 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 OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by January 23, 2003, 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 the filing fee, which currently is set at \$1,100. 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 February 12, 2003. Petitions to stay must be filed by January 28, 2003 petitions to reopen must be filed by February 7, 2003.

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 January 13, 2004, 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 no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

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

Vernon A. Williams  
Secretary