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SERVICE DATE – LATE RELEASE SEPTEMBER 19, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 156)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—IN HARRIS, FORT BEND, AUSTIN, WHARTON, AND COLORADO COUNTIES, TEX.

Docket No. AB 33 (Sub-No. 253X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN COLORADO AND WHARTON COUNTIES, TEX.

Decided: September 19, 2014

In these abandonment proceedings, approximately 58 miles of rail line near Houston, Tex., known as the Westpark Line were authorized to be abandoned and rail banked by Union Pacific Railroad (UP) pursuant to the National Trails System Act, 16 U.S.C. § 1247(d), in a series of transactions dating back to 2000. Recently, in Metropolitan Transit Authority of Harris County, Tex.—Acquisition Exemption—Union Pacific Railroad Company, Docket No. FD 35846, the owner of the real property and improvements underlying the rail line, the Metropolitan Transit Authority of Harris County, Tex. (METRO), sought to acquire the right to restore rail service over the Westpark Line from UP.

In a related acquisition proceeding, Fort Bend County Toll Road Authority—Acquisition Exemption—Metropolitan Transit Authority of Harris County, Tex. (Right To Restore Rail Service over a Railbanked Right-of Way in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Tex.), Docket No. FD 35847, the Fort Bend County Toll Road Authority (FBCTRA) seeks to acquire from METRO the right to reactivate rail service over a 41.2-mile stretch of the Westpark Line. FBCTRA's notice is contingent upon METRO's notice first becoming effective. Although METRO's authority became effective on August 28, 2014, FBCTRA's notice of exemption seeking acquisition authority was held in abeyance, by a decision issued on August 27, 2014, in order to address issues concerning rail banking, as discussed in more detail below.

In addition, on July 29, 2014, FBCTRA and METRO filed a related joint petition to vacate and reissue the certificate of interim trail use (CITU) permitting rail banking/interim trail use in Union Pacific Railroad Company—Abandonment—in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Tex., Docket No. AB 33 (Sub-No. 156), and the notice of interim trail use (NITU) permitting rail banking/interim trail use in Union Pacific Railroad Company—Abandonment Exemption—in Colorado and Wharton Counties, Tex., Docket No. AB 33 (Sub-No. 253X). In the joint petition, FBCTRA and METRO request that the Board: (1) reopen the two abandonment proceedings; (2) vacate the CITU in AB 33 (Sub-No. 156),

under which METRO has been operating as trail user, with respect to a portion of the subject right-of-way; (3) vacate the NITU in AB 33 (Sub-No. 253X), under which METRO has been operating as trail user; (4) reissue a CITU in AB 33 (Sub-No. 156) to FBCTRA with respect to a portion of the subject right-of-way; and (5) reissue a NITU in AB 33 (Sub-No. 253X) to FBCTRA.

The parties state that FBCTRA's immediate development plans include the expansion of the Westpark Tollway for a 13-mile stretch beginning at milepost 20, approximately 2,020 feet east of the Harris-Fort Bend County border. According to the parties, within this 13-mile stretch, FBCTRA has acquired, or intends to acquire, sufficient real property to comprise a 300-foot wide corridor running over and parallel to the first 13 miles of the subject right-of-way. Within this 13-mile stretch, the parties state that FBCTRA intends to preserve 26 feet of the original 100-foot wide subject right-of-way for trail use and possible future restoration of rail service.

In order for the Board to grant the relief requested, METRO and FBCTRA must first demonstrate that, in this particular case, the remaining width of the rail-banked right-of-way would be sufficient to permit the reestablishment of rail service. See Missouri Pac. R.R.—Abandonment Exemption—In Red River and Bowie Counties, Tex., Docket No. AB-3 (Sub-No. 137X) (STB served May 16, 2007) (requiring a similar demonstration where a 100-foot wide right-of-way was proposed to be reduced to 50 feet). The present record is insufficient to permit the Board to make that determination.<sup>1</sup> Based on the pleadings, it appears that only a 26-foot-wide right-of-way has been retained for interim trail use and rail banking. The parties state generally that all 300 feet of FBCTRA's transportation corridor "remains available for future transit/rail development." But that does not answer the question of whether the width of right-of-way that would remain rail banked in this proceeding in fact is sufficient for the restoration of rail service. Consequently, METRO and FBCTRA are directed to submit, by October 21, 2014, a more detailed discussion as to why the remaining 26-foot-wide right-of-way would be adequate to accommodate future rail service.

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<sup>1</sup> In an earlier proceeding, the Board granted METRO's request to terminate trail use for a portion of the Westpark Line's 100-foot-wide right-of-way, to permit the conveyance by METRO to the Harris County Toll Road Authority, which sought the land for construction and operation of a toll road lane for the Westpark Tollway. METRO stated that it would continue to have a 50-foot wide corridor to permit the future restoration of rail service and interim trail use on the right-of-way (although only 5 feet would continue to be held by it as the trail sponsor under the Trails Act and the remainder, up to 45 feet in width, would be held by METRO in fee simple). There, unlike here, METRO stated that the configuration of the parcels making up the strip of land to be conveyed to METRO had been designed to provide for appropriate curvatures to allow for the future restoration of rail service. See Union Pac. R.R.—Abandonment—In Harris, Fort Bend, Austin, Wharton and Colorado Counties, Tex., AB 33 (Sub-No. 156) (STB served Dec. 1, 2006).

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

It is ordered:

1. METRO and FBCTRA are directed to submit, by October 21, 2014, a detailed discussion demonstrating that, should the relief sought here be granted, the remaining 26-foot-wide right-of-way would be of sufficient width to permit future rail service.
2. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.