

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 109X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN MALHEUR COUNTY, OR AND OWYHEE COUNTY, ID
(HOMEDALE BRANCH)

Decided: August 18, 1997

On May 2, 1997, Union Pacific Railroad Company (UP)¹ filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 and 10904² to abandon a segment of its Homedale Branch, extending from milepost 11.4 near Adrian, OR, to the end of the line at milepost 33.5 near Marsing, ID, a distance of 22.1 miles, in Malheur County, OR, and Owyhee County, ID.³ Pursuant to 49 U.S.C. 10502(b), the Board published a notice in the Federal Register (62 FR 28104) on May 22, 1997, instituting an exemption proceeding. The United Transportation Union seeks imposition of labor protective conditions. We will grant the exemption, subject to standard employee protective, geodetic survey consultation, historic preservation, and environmental quality consultation conditions.

BACKGROUND

UP's Homedale Branch extends generally in a north-south direction from UP's main line at Nyssa, OR, and ends near Marsing, a total distance of approximately 33.5 miles.⁴ UP proposes to abandon a 22.1-mile main track segment of this branch between Adrian and Marsing. The abandonment includes the non-agency stations of Napton, OR (milepost 16.90), Homedale, ID (milepost 24.50), Petty, ID (milepost 25.89), and Marsing (milepost 33.10).

The track is constructed of 75-, 80-, 90-, and 131-pound jointed rail, with an additional 1.15 track miles of miscellaneous sidings. The line has a maximum operating speed of 20 mph (except for the segments between milepost 32.9 and milepost 33.5 where the maximum speed is 10 mph). The line does not require any track rehabilitation to meet FRA class 1 standards. Shippers on the line are located at Homedale⁵ and Marsing.⁶ Alternative service is available to shippers via truck over an extensive area highway network, and UP will continue to offer area rail service at Wilder,

¹ UP is a railroad affiliate in the Union Pacific Rail System and is operated under common control and management with Southern Pacific Transportation Company. UP owns and operates the line proposed for abandonment.

² In its petition, UP seeks an exemption from 49 U.S.C. 10903-04. UP appears to be citing the provisions of the former Interstate Commerce Act rather than those of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA). In any event, UP has not supported its request for exemption from any sections other than current section 10903. Accordingly, we will limit our consideration of the petition for exemption to that section.

³ A letter in support of the proposed abandonment was filed by Rail Services Update on June 5, 1997.

⁴ The Homedale Branch is closely paralleled by Oregon State Highway 201 to the Oregon-Idaho state line where the highway resumes as Idaho State Highway 19, which then intersects the rail line near Homedale. On the east side of Homedale, U.S. Highway 95 joins Idaho State Highway 19 and travels in a southerly direction.

⁵ J.C. Watson Company, M.K. Rail, Treasure Valley Seed, and Oxford, Inc.

⁶ Bowman Produce and Symms Fruit Ranch.

ID. The line receives service on an as-needed basis to place empty cars and to receive loaded cars. The line handled 49 carloads in 1995 and 42 carloads in 1996; a total of 39 carloads is projected for the forecast year.

UP states that continued operation of this line will result in a substantial financial drain. The stated reasons for the sought abandonment are: (1) freight revenues on the line are insufficient to justify the costs of operation and maintenance; and (2) there is no reasonable prospect that traffic and revenues will increase sufficiently in the foreseeable future to justify continued operation of the line. According to UP, a forecast year operating loss of \$209,836 would result from continued operation of the line. UP also indicates that abandonment may be beneficial because of a new U.S. Highway 95 bypass that will be constructed around Homedale this year. According to UP, if the line remains in operation, construction of a new, costly, protected crossing would be necessary.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board 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 of the proposed abandonment under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of abandoning this line, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. By allowing UP to avoid maintenance and operating costs on the line and to apply its assets more productively elsewhere on its system, an exemption will promote a safe and efficient rail transportation system, foster sound economic conditions in transportation, ensure effective competition and coordination between rail carriers and other transportation modes, encourage efficient management, and promote energy conservation [49 U.S.C. 10101(3), (5), (9), and (14)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. The shippers on the line have not objected to the proposed abandonment and appear to have adequate alternative transportation available to them in the form of motor carriers and other rail service. Nevertheless, to ensure that shippers are informed of our decision, we will direct UP to serve a copy of this decision on each of them 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.

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 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, and analyzed the probable effect of the proposed action on the quality of the human environment.

In an environmental assessment (EA) served July 7, 1997, SEA indicated: (1) that the National Geodetic Survey (NGS) has identified 19 geodetic station markers along the rail line and requests 90 days' notice to plan relocation of any markers that may be disturbed or destroyed; (2) that the Oregon State Historic Preservation Office has not completed its evaluation of the potential impact of this project on historic resources; (3) that the Idaho State Historical Society states that several prehistoric archaeological sites related to American Indian habitation and resource use have been identified within the general area, and feels that similar sites may be located within the railroad right-of-way; (4) that the Idaho State Historic Preservation Office (SHPO) states that the South Alternate of the Oregon Trail reportedly followed the south side of the Snake River, roughly

paralleling the Homedale Branch, and that although the Trail within this reach has been obliterated, sites associated with emigration and early settlement may still be visible, and, therefore, the SHPO recommends that a professional archaeologist inspect the Homedale Branch prior to abandonment; and (5) that the Oregon Department of Environmental Quality (ODEQ) states that the proposed abandonment will occur in close proximity to the Snake River, and that, in order to avoid adverse impact on the Snake River, the ODEQ recommends management of site run-off associated with the disturbance of soils in or around waters of the state, construction debris waste collection and disposal activities, and timing of the in-stream work to coincide with low flows in the river.

Therefore, SEA recommends that we impose conditions requiring UP to: (1) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers; (2) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (3) consult with the ODEQ, Water Quality Division, Pendleton, OR, prior to salvaging the right-of-way.

No comments to the EA were filed by the August 1, 1997 due date. Accordingly, based on SEA's recommendations, which we adopt, 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.

Although SEA has indicated that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has requested a public use condition and none will be imposed.⁷

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 prior approval requirements of 49 U.S.C. 10903 the abandonment by UP of the above-described line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); and (2) the conditions that Union Pacific Railroad Company shall (a) consult with the National Geodetic Survey and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers, (b) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, and (c) consult with the Oregon Department of Environmental Quality, Water Quality Division, Pendleton, OR, prior to salvaging the right-of-way.

2. UP is directed to serve a copy of this decision on J.C. Watson Company, M.K. Rail, Treasure Valley Seed, Oxford, Inc., Bowman Produce, and Symms Fruit Ranch within 5 days after service of this decision and to certify to us that it has done so.

3. Provided no offer of financial assistance (OFA) has been received, this exemption will be effective on September 19, 1997.

4. Petitions to stay must be filed by September 4, 1997; petitions to reopen must be filed by September 25, 1997.

5. Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of this decision granting the petition for exemption, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). Each offer of financial assistance must be accompanied by the filing fee,

⁷ Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by June 11, 1997.

which currently is set at \$900. See 49 CFR 1002.2(f)(25).⁸
The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1).

6. 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.**”

7. 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 20, 1998, 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 one-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

⁸ We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued final rules in 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 STB served June 27, 1997).