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SERVICE DATE - MAY 21, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 166X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN ADAMS AND HALL COUNTIES, NE (HANSEN INDUSTRIAL LEAD
BETWEEN HASTINGS AND HANSEN, NE)

Decided: May 17, 2001

By petition filed on January 31, 2001,¹ 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 a 6.5-mile line of railroad known as the Hansen Industrial Lead, extending from milepost 1.0 near Hastings to the end of the line at milepost 7.5 at Hansen, in Adams and Hall Counties, NE. A request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed by the City of Hastings, NE (the City). We will grant the exemption, subject to environmental, public use, trail use, and standard employee protective conditions.

BACKGROUND

The portion of the Hansen Industrial Lead to be abandoned was constructed in 1872 by the Hastings & Grand Island Railroad Company, and was once part of a 24-mile line between Hastings and Grand Island, NE. In 1988, UP abandoned a 10.9-mile segment in the middle of the line, between Hansen and River, NE, and retained the Hansen Industrial Lead, as well as the segment from River to Grand Island.²

According to UP, the line is classified as Federal Railroad Administration excepted track, with a track speed of 10 miles per hour, and is constructed of 75-pound rail, with the exception of a .08-mile section, which is constructed of 133-pound rail. UP plans to retain the 133-pound rail and expects the remaining track material to be sold on the open market. The line has 6 bridges ranging in age from 77 to 81 years old.

¹ Notice of the filing was served and published in the Federal Register on February 20, 2001 (66 FR 10948).

² See Union Pacific Railroad Company--Abandonment--Between Hansen and River, in Hall County, NE, Docket No. AB-33 (Sub-No. 53) (ICC served Sept. 1, 1988).

The only shipper on the line, Heartland Co-op (Heartland), is located at the end of the line at Hansen. Heartland shipped 373 carloads of corn in 1999. It supports the proposed abandonment³ and plans to use trucks for all future shipments into and out of its Hansen facility. There is no overhead traffic on the line.

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. 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 also foster sound economic conditions and encourage efficient management by relieving UP from the cost of owning and maintaining the line and allowing it 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 affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power because Heartland, the sole shipper on the line, does not oppose the proposed abandonment and will be using trucks exclusively for shipments into and out of its facility. Given our market power finding, we need not determine whether the proposed transaction is limited in scope. To ensure that Heartland is informed of our action, we will require UP to serve a copy of this decision on the shipper within 5 days of the service date of this decision and certify to us that it has done so.

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 abandonment. 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 effects of the proposed action on the

³ UP submitted with its petition a letter of support from Heartland.

quality of the human environment. SEA served an environmental assessment (EA) on March 30, 2001, and requested comments. In the EA, SEA notes that the U.S. Environmental Protection Agency (EPA), Region 7, the U.S. Department of Commerce, National Geodetic Survey (NGS), the U.S. Army Corps of Engineers, Omaha District (ACOE), and the Hall County Board of Supervisors (the County) have not completed their review of the proposed abandonment. Therefore, SEA recommends that UP consult with: (a) EPA and ACOE, and secure all necessary permits prior to initiation of salvage or disposal activities; (b) NGS prior to initiation of any salvage operations and notify NGS not less than 90 days prior to commencement of such operations; and (c) the County prior to initiation of any salvage activities in order to address any concerns the County may have. SEA also notes that the Nebraska Department of Roads, Public Transportation Section (NE-DOR) requests that UP prepare a track salvage work plan. Therefore, SEA recommends that UP consult with NE-DOR prior to initiation of any salvage activities regarding the preparation of a track salvage work plan.

No comments to the EA were filed by the April 30, 2001 due date. We will impose the conditions recommended by SEA. 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.

On February 21, 2001, the City filed a request for interim trail use/rail banking under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The City submitted a statement of willingness to assume financial responsibility for the right-of-way, and 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. UP states that it is willing to negotiate with the City for interim trail use. Because the City's request complies with the requirements of 49 CFR 1152.29, and UP is willing to enter into 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 the right-of-way may be suitable for other public use following abandonment. As noted above, the City has also requested that a 180-day public use condition be imposed, precluding UP from: (1) disposing of the corridor, other than the 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. The City submits that this corridor would make an excellent recreational trail and that conversion of the property for trail use is in accordance with local plans. The City states that the 180-day period is needed to complete negotiations with UP.

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 City has 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 also will be imposed, commencing from the effective date of this decision and notice. If a trail use agreement is reached on a portion of the right-of-way, UP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser. Rather it provides an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

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 U.S.C. 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 of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that UP shall: (1) consult with EPA, Region 7, and ACOE, and secure all necessary permits prior to initiation of salvage or disposal activities; (2) consult with NGS prior to initiation of any salvage operations and notify NGS not less than 90 days prior to commencement of such operations; (3) consult with the County prior to initiation of any salvage activities in order to address any concerns the County may have; (4) consult with NE-DOR prior to initiation of any salvage activities regarding the preparation of a track salvage work plan; (5) leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels, (but not track and track materials) for a period of 180 days from the effective date of this decision and notice, to enable any state or local government agency or any other interested person to negotiate the acquisition

of the line for public use; and (6) comply with the interim trail use/rail banking procedures set forth below.

2. UP is directed to serve a copy of this decision and notice on Heartland within 5 days after the service date of this decision and notice and 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 May 31, 2001, 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 \$1,000. 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 on June 20, 2001. Petitions to stay must be filed by June 5, 2001, and petitions to reopen must be filed by June 15, 2001.

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 May 21, 2002, 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, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary