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SERVICE DATE – APRIL 4, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 236X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN BEXAR COUNTY, TX

STB Docket No. AB-576 (Sub-No. 2X)

ALAMO GULF COAST RAILROAD COMPANY—DISCONTINUANCE OF
SERVICE EXEMPTION—IN BEXAR COUNTY, TX

Decided: April 2, 2007

By petition filed on December 15, 2006, Union Pacific Railroad Company (UP) and Alamo Gulf Coast Railroad Company (AGCR) jointly seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for UP to abandon, and for AGCR to discontinue service over, a line of railroad extending between milepost 253.26 and milepost 256.0 on UP's Kerrville Subdivision, a distance of 2.74 miles in Bexar County, TX. Notice of the filing was served on January 4, 2007, and published in the Federal Register on January 5, 2007 (72 FR 624). We will grant the petition for exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

The 2.74-mile rail line over which UP seeks to abandon, and AGCR seeks to discontinue service, is part of the Kerrville Subdivision that, in 1890, was constructed by UP's predecessor, the San Antonio and Arkansas Pass Railway. This line only runs northward from San Antonio, TX, through Beckmann, TX, near milepost 253. At one time, the line extended to Kerrville, TX, but by the mid 1990's, it only extended to milepost 259.49 near Camp Stanley.

AGCR is a wholly-owned subsidiary of Martin Marietta Materials, Inc. (MMM), which operates a stone quarry at Beckmann. AGCR was authorized to acquire by lease from UP's predecessor, the Southern Pacific Transportation Company (SP), and to provide common carrier rail service over a portion of the Kerrville Subdivision extending

between milepost 252 and milepost 257.¹ Subsequently, AGCR leased SP's track from milepost 252.55 to milepost 257.0 and also began providing industrial track service within MMM's quarry at Beckmann, which connects to the Kerrville Subdivision by a switch connection near milepost 252.92. Because no traffic had moved on the Kerrville Subdivision north of milepost 256.00 for several years prior to the year 2000, UP and AGCR filed a joint notice of exemption authorizing UP to abandon a portion of the Kerrville Subdivision extending from milepost 256.0 to its terminus at milepost 259.49 and authorizing AGCR to discontinue service over a portion extending from milepost 256.0 to milepost 257.0.²

Since November 2000, only two shippers have remained on the 2.74-mile line of railroad proposed for abandonment: Builders Firstsource—Texas Group, L.P. and Foxworth-Galbraith Lumber Company. Petitioners state that, in recent years, very little traffic has moved on the line and has consisted only of inbound carloads of lumber. Petitioners' traffic data shows that, in the year 2004, AGCR delivered 117 carloads to the shippers, and 106 carloads in the year 2005, or an average about two carloads per week. Petitioners note that UP transported these cars to Beckmann where they were interchanged with AGCR, and, in turn, AGCR delivered them to the shippers and returned the empties to UP.

Prior to the proposed abandonment, Fourth Quarter Properties (Developer), a real estate development company, has pursued plans to utilize the right-of-way for development of a major shopping and entertainment center. In furtherance of these plans, Developer has made agreements with UP, the shippers and MMM by which Developer has purchased property from UP, the shippers, and MMM, including the real estate underlying the line. In the agreements, UP has retained for itself and AGCR an exclusive railroad easement over the right-of-way, and UP has retained ownership of the track structure. Petitioners state that the active rail shippers on the line have satisfactory transportation alternatives and have agreed not to oppose the proposed abandonment and discontinuance. And both shippers have now filed letters in support of the proposal.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued 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)

¹ See Alamo Gulf Coast Railroad Company—Lease and Operation Exemption—Certain Lines of Southern Pacific Transportation Company, Finance Docket No. 32855 (STB served Jan 26, 1996).

² See Union Pacific Railroad Company—Abandonment Exemption—in Bexar County, TX, STB Docket No. AB-33 (Sub-No. 162X), and Alamo Gulf Coast Railroad Company—Discontinuance of Service Exemption—in Bexar County, TX, STB Docket No. AB-576 (Sub-No. 1X) (STB served Nov. 24, 2000).

the transaction of 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 exist [49 U.S.C. 10101(7)]. An exemption will foster sound economic conditions and encourage efficient management by relieving petitioners from the expense of retaining and maintaining a line that generates very little traffic and by allowing petitioners to apply their assets more productively elsewhere on their rail systems [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power, because the two shippers on the line have transportation alternatives and have filed in support of the proposed abandonment and discontinuance. Nevertheless, to ensure that the shippers are informed of our action, we will require UP and AGCR to serve a copy of the decision and notice on Builders Firstsource—Texas Group, L.P. and Foxworth-Galbraith Lumber Company within 5 days of the service date 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 and AGCR have submitted a combined environmental and historic report with their petition and have 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 report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) on February 13, 2007, requesting comments by March 15, 2007. In the EA, SEA recommended that two conditions be imposed on any decision granting abandonment authority.

SEA stated that the National Geodetic Survey (NGS) submitted comments that two geodetic station markers have been identified that may be affected by the proposed abandonment and requested 90 days notification in advance of any activities that will disturb or destroy these markers in order to plan for their relocation. Therefore, SEA recommended that UP be required to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS.

SEA also noted in the EA that the Texas Parks and Wildlife Department (TPWD) submitted comments stating that the proposed abandonment could impact habitat of the Golden-cheeked Warbler, a Federally listed endangered species. Therefore, SEA recommended that, prior to the commencement of any salvage activities, UP consult with the U.S. Fish and Wildlife Service (USFWS) and TPWD to determine if avoidance or impact mitigation measures are necessary to protect habitat for the Golden-cheeked Warbler and report the results of this consultation in writing to SEA.

Comments in response to the EA were received from USFWS. Based on the comments received, SEA recommends that the condition involving the Golden-cheeked Warbler be modified to require that UP not conduct salvage activities during the nesting season, which is between March and September, and, if salvage is planned for that time period, require that UP hire a consultant to determine if the species is present in the proposed project area. If the species is not present in the project area, UP may conduct salvage activities. If the species is present in the project area, then UP shall consult with USFWS and TPWD to determine if avoidance or impact mitigation measures are necessary to protect habitat for the Golden-cheeked Warbler and report the results of any surveys or consultations in writing to SEA prior to the onset of salvage activities.

We will impose the environmental conditions as recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment and discontinuance, 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 in the EA that the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.

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, and the discontinuance of service by AGCR over, 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) notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS; and (2) not conduct salvage activities during the nesting season of the Golden-cheeked Warbler, which is between March and September, and, if salvage is planned for that time period, UP shall hire a consultant to determine if the species is present in the proposed project area. If the species is not present in the project area, UP may conduct salvage activities. If the species is present in the project area, then UP shall consult with USFWS and TPWD to determine if avoidance or impact mitigation measures are necessary to protect habitat for the Golden-cheeked Warbler and report the results of any surveys or consultations in writing to SEA prior to the onset of salvage activities.

2. UP and AGCR are directed to serve a copy of this decision on Builders Firstsource—Texas Group, L.P. and Foxworth-Galbraith Lumber Company within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. 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 April 13, 2007, 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 \$1,300. See 49 CFR 1002.2(f)(25).

4. 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.”**

5. Provided no OFA has been received, this exemption will be effective on May 4, 2007. Petitions to stay must be filed by April 19, 2007, and petitions to reopen must be filed by April 30, 2007.

6. 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 April 4, 2008, 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 Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary