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SERVICE DATE - APRIL 2, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 131X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--  
IN CAMERON COUNTY, TX

Decided: April 1, 1999

By petition filed December 14, 1998,<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 a 7.14-mile line of railroad known as the Brownsville Branch, extending from milepost 197.90 near Naranjo Road to milepost 205.04 near E. Van Buren Street, in Brownsville, Cameron County, TX. The United Transportation Union requests imposition of labor protective conditions. In addition, the City of Brownsville, on behalf of the Brownsville Metropolitan Planning Organization (BMPO),<sup>2</sup> requests issuance of a public use condition. We will grant the exemption, subject to public use, environmental, and standard employee protective conditions.

BACKGROUND

The Brownsville Branch was formerly a main line of the Southern Pacific Transportation Company (SP).<sup>3</sup> UP states that any overhead traffic which previously moved on the line has been rerouted, and local traffic has been minimal, with no indication that future traffic will ever develop to the point that would justify the cost of continued rail operations. Accordingly, UP seeks to abandon the line. It notes that the surrounding area at the end portion of the line will be made suitable for a new court house in Brownsville.

There are three shippers located on the line: Shane Custom House Brokers (Shane); Edelsteins Better Furniture (Edelsteins); and Angelo International (Angelo). According to UP, Shane formerly received carloads of plastic materials but has relocated to another site on the

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on December 31, 1998 (63 FR 72345).

<sup>2</sup> BMPO is a state agency interested in transportation infrastructure.

<sup>3</sup> SP was merged into UP pursuant to Board authority granted in Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996).

Brownsville & Rio Grande International Railroad. Edelsteins received a minimal number of shipments of furniture in 1996 and 1997, and received no shipments in 1998. UP states that this shipper has indicated that it does not require rail service and can receive its shipments by truck or trailer-on-flat-car service. Angelo's only connection with the line is that it previously participated in U.S. Customs inspections of rail cars pursuant to a contract with SP. According to UP, Angelo does not use the line to forward or receive shipments.

UP states that the line meets Federal Railroad Administration Class 2 safety standards. It consists of 6.84 miles of 90-pound rail and .30-mile of 112-pound rail. UP estimates the net liquidation value of the track and track material minus removal costs at \$49,787. The annual cost of normalized maintenance to a Class 1 level is \$88,562. UP states that this figure is high due to 10 pairs of flashing lights and a total of 21 road crossings.

#### 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 of the costs of owning and maintaining a minimally used 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 the shippers on the line have not objected to the proposed transaction<sup>4</sup> and have either relocated their facilities, do not use rail transportation, or have adequate transportation alternatives available.<sup>5</sup> Nevertheless, to ensure that these shippers are informed of our decision, we will require UP to serve a copy of this decision on them within 5 days of the service date and certify to us that it has done so.

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<sup>4</sup> UP states that they were each served with a copy of the petition.

<sup>5</sup> 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 abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on February 12, 1999, recommending that no environmental or historic conditions be imposed on the abandonment.

A comment to the EA was received from the U.S. Fish and Wildlife Service (FWS) by the March 12, 1999 due date. Based on the comment, SEA recommends that we impose the condition that, prior to any salvage operations, UP consult with FWS in Texas if UP plans during salvage to disturb or clear brush habitat adjacent to the line. We will impose the recommended condition and 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.

By letter filed on January 13, 1999, BMPO requests imposition of a 100-day public use condition under 49 U.S.C. 10905. BMPO states that the rail corridor has been identified as a possible hike and bike trail, and would make an excellent recreational trail. The 100-day time period is requested to provide BMPO time to review title information and prepare a trail plan. BMPO requests that UP be precluded from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms. BMPO also requests that UP be precluded from removing or destroying potential trail-related structures such as bridges, trestles and culverts because these structures may have considerable value for trail purposes. In its petition, UP indicates that the line is probably not suitable for other public purposes. SEA has found, however, that, following abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905.

BMPO has met the criteria for imposing a public use condition, as set forth 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 (up to the statutory maximum of 180 days); and (4) justification for the period of time requested. Accordingly, a 100-day public use condition will be imposed. We note that a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, UP is not required to deal exclusively with BMPO, but may engage in negotiations with other interested persons.

The parties should note that the operation of the public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986), 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 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 public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the public use process 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 FWS in Texas prior to conducting any salvage operations if UP plans during salvage to disturb or clear brush habitat adjacent to the line; and (2) leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (but not track and track materials), for a period of 100 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. UP must serve a copy of this decision on Shane, Edelsteins and Angelo within 5 days after the service date of this decision and 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 12, 1999, 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 a \$1,000 filing fee. 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 2, 1999. Petitions to stay must be filed by April 19, 1999, and petitions to reopen must be filed by April 27, 1999.

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 2, 2000, 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 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