

SERVICE DATE - JUNE 16, 1997

SURFACE TRANSPORTATION BOARD

DECISION <sup>1</sup>

STB Docket No. AB-33 (Sub-No. 101)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT--  
PLAINVILLE BRANCH (PLAINVILLE-COLBY LINE) IN ROOKS,  
GRAHAM, SHERIDAN AND THOMAS COUNTIES, KS

STB Docket No. AB-3 (Sub-No. 140X)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--  
IN CLOUD AND JEWELL COUNTIES, KS

Decided: June 12, 1997

In a decision served on March 28, 1997, in STB Docket No. 33 (Sub-No. 101), Union Pacific Railroad Company (UP) was granted authority under 49 U.S.C. 10903 to abandon its line of railroad known as the Plainville-Colby Line between milepost 1-2.0 near Plainville and milepost 201.0 near Colby, a distance of 99.0 miles, in Rooks, Graham, Sheridan and Thomas Counties, KS. The decision became effective on April 28, 1997. On April 28, 1997, UP filed a letter stating that the line had been abandoned "subject to any possible future imposition of a trail condition." The letter also stated that the track structure had not yet been removed.

In a decision served on April 4, 1997, in STB Docket No. AB-3 (Sub-No. 140X), Missouri Pacific Railroad Company<sup>2</sup> was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its 33.4-mile Burr Oak Branch line located between milepost 496.3 at Jamestown and the end of the line at milepost 529.7 at Burr Oak, in Cloud and Jewell Counties, KS. The exemption became effective on May 4, 1997. On May 5, 1997, UP filed a letter stating that the line had been abandoned "subject to any possible future imposition of a trail use condition on the right of way." The letter also stated that the track structure had not yet been removed.

Both of these abandonment proceedings have been processed under the former regulations for abandonments, which do not require the filing of a notice of consummation, but do permit one as evidence of the railroad's intent. The Board's new regulations, adopted 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), became effective on January 23, 1997, for abandonment approvals or exemptions sought on or after that effective date. The new regulations include a provision at 49 CFR 1152.29(e)(2), that is designed to provide clear evidence of when an authorized abandonment has been consummated and thus is designed to avoid litigation over whether or not a line has been abandoned. Section 1152.29(e)(2) requires that:

A railroad that receives authority from the Board to abandon a line (in a regulated abandonment proceeding under 49 U.S.C. 10903, or by individual or class exemption issued under 49 U.S.C. 10502) shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network)

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<sup>1</sup> These proceedings are not consolidated. A single decision is being issued for both proceedings for administrative convenience.

<sup>2</sup> On January 1, 1997, Missouri Pacific Railroad Company merged into UP.

A proper notice of consummation should clearly state when a carrier consummates an abandonment authorization and not raise new questions.<sup>3</sup> UP's letter/notices, on the other hand, create the type of confusion that the new regulations are designed to avoid. Accordingly, the letters filed in these proceedings cannot be interpreted as valid notices of consummation. UP's apparent willingness to preserve these rights-of-way under the National Trails System Act, 16 U.S.C. 1247(d), leaves open the question of whether it intends to completely remove these rights-of-way from the interstate rail network and to relinquish any easements and return use of such property to any holders of reversionary property interests. In addition, UP states that it has not salvaged the track in either case. Under these circumstances, the letters do not provide valid notice of the consummation of the proposed abandonments. At the same time, these letters might not effectively preserve these rights-of-way for future trail or rail use as UP seemingly intends. The letters instead merely create troublesome ambiguities. Therefore, the letters will be rejected.<sup>4</sup>

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

*It is ordered:*

1. The letter filed on April 28, 1997, in STB Docket No. 33 (Sub-No. 101) is rejected.
2. The letter filed on May 4, 1997, in STB Docket No. 3 (Sub-No. 140X) is rejected.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

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<sup>3</sup> Section 1152.29(e)(2) created a new requirement that a notice must be filed within 1 year of the service date of the decision permitting the abandonment. After 1 year, without a valid notice of consummation and in the absence of outstanding conditions that would prevent full abandonment of the line, the Board's authorization for the abandonment of a line of railroad will automatically expire unless extended for good cause, and new Board approval would have to be obtained if the railroad wishes to abandon the line.

<sup>4</sup> These abandonments were processed under the old regulations, but UP is advised that the filing of similarly unresponsive or ambiguous letters purporting to be notices of abandonment consummation will be found to clearly fall short of compliance with the letter and spirit of the new regulations at 49 CFR 1152.29(e)(2).