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SERVICE DATE – JUNE 22, 2005

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 195X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN SALT LAKE COUNTY, UT

Decided: June 16, 2005

By petition filed on March 4, 2005, 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 and discontinue service over a line of railroad, known as the Sugar House Branch, from milepost 0.0 near Roper to the end of the branch line at milepost 2.74 near Sugar House, a distance of 2.74 miles in Salt Lake County, UT. Notice of the filing was served and published in the Federal Register on March 24, 2005 (70 FR 15159-60). Utah Transit Authority (UTA) filed a request for issuance of a notice of interim trail use (NITU). We will grant the petition for exemption, subject to trail use, environmental, and standard employee protective conditions.

BACKGROUND

UTA currently owns the line, constructed in 1900 by the Denver and Rio Grande Western Railway. UP states that its abandonment and discontinuance of operations over the line will not alter the current physical status of the line. UP proposes to abandon its freight operating easement and trackage rights over the line.¹

UP states that the proposed abandonment will have no adverse effect on any shippers on the line. According to UP, there is no practicable possibility for substantial new rail business on the line, and there is no overhead traffic on the line. UP states that, in 2002, the line served two customers, Harbison Walker Refractories (Harbison) and Burton Lumber Company (Burton Lumber). Harbison received cars in 2002 and then relocated off the UP railroad network in 2003. Burton Lumber was an active shipper on the line until it relocated to another UP served location in Salt Lake City in October of 2003. UP states that the Salt Lake City and Salt Lake County areas are served by BNSF Railway Company and numerous highways are available to potential UP shippers, including but not limited to Interstate 80, 15, and 215.

¹ See Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company, STB Finance Docket No. 34170 (STB served May 22, 2002).

UP indicates that the area serviced by the line appears to be undergoing a fundamental change away from industrial use, and that it is of the opinion that there is little possibility, if any, that a new rail oriented industry would relocate on the line. Because of the absence of rail activity and the low probability of any further business, UP seeks to abandon the line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without our 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 expedite regulatory action and will reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption will also foster sound economic conditions and encourage efficient management by allowing UP to avoid the need to retain and operate a line longer used by any shipper [49 U.S.C. 10101(5)]. 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. As discussed above, Harbison received cars in 2002 and then relocated off the UP railroad network in 2003. Further, Burton Lumber was an active shipper on the line until it relocated to another UP served location in Salt Lake City in October 2003. Finally, the line will have no recurring local traffic. Nevertheless, to ensure that Harbison and Burton Lumber are informed of our action, we will require UP to serve a copy of this decision and notice on them within 5 days of the service date and to certify to the Board 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 the 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 submitted a combined environmental and historic 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. The Board's 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 quality of the human environment. SEA served an environmental assessment (EA) on May 3, 2005. Comments to the EA were requested by June 2, 2005.

In the EA, SEA stated that, at the time the environmental assessment was prepared, the State Historic Preservation Office (SHPO) had not completed its review of the proposed abandonment. Therefore, SEA recommended in the EA that UP take no steps to alter the historic integrity of any railroad related structures to ensure compliance with the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f) (NHPA).

SEA further stated that the National Geodetic Survey (NGS) had identified five geodetic station markers designated as U 86, 4240, H 18, WW 90 and C 17 that may be affected by the proposed abandonment. NGS stated that, if there are any planned activities which would disturb or destroy these markers, it requires not less than 90 days' notification in advance of such activities in order to plan for their relocation. Therefore, SEA has recommended that the Board impose a condition that requires that, if there are any planned activities which would disturb or destroy the identified station markers, UP must notify NGS 90 days in advance of any such activities in order to plan for their relocation.

SEA received no comments to the EA by the due date. Accordingly, we will impose the conditions recommended by SEA in the EA. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect the quality of the human environment on the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be appropriate for other public use under 49 U.S.C. 10905. No one has sought a public use condition, however, and none will be imposed.²

As previously noted, UTA filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). UTA has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that the 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. By letter filed on April 4, 2005, UP states that it is willing to negotiate with UTA for interim trail use. Because UTA's request complies with the requirements of 49 CFR 1152.29 and UP is willing to enter into interim trail use negotiations, we will issue a NITU authorizing the parties to negotiate an agreement for interim trail use/rail banking during the 180-day period prescribed below. If the parties reach an agreement, 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.

² Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by April 13, 2005.

The parties should note that operation of the trail 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 Right-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 takes priority over interim trail use/rail banking. Accordingly, if an OFA is timely filed under 49 CFR 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), (f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and interim trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, the interim trail use process may proceed.

Subject to the conditions imposed in this proceeding, this action 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, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment and discontinuance of service by UP of 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), subject to the conditions that UP: (1) comply with the terms and conditions implementing interim trail use/rail banking, as set forth below; (2) take no steps to alter the historic integrity of any railroad related structures to ensure compliance with the section 106 process of the NHPA; and (3) notify NGS 90 days in advance of any planned activities that would disturb or destroy any of five geodetic station markers (designated as U 86, 4240, H 18, WW 90 and C 17) in order to plan for the relocation of the identified station markers.
2. UP is directed to serve a copy of this decision and notice on Harbison and Burton Lumber within 5 days after the service date of this decision and notice and to 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 terminal 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 and there is no superseding OFA, 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 July 5, 2005, 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 is currently set at \$1,200. 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 July 22, 2005. Petitions to stay must be filed by July 7, 2005, and petitions to reopen must be filed by July 18, 2005.

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 a notice of consummation by June 22, 2006, 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 Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary