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SERVICE DATE – LATE RELEASE JANUARY 26, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 230X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN LASSEN
COUNTY, CA, AND WASHOE COUNTY, NV

Decided: January 25, 2007

By petition filed on October 10, 2006, 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 for UP to abandon and discontinue service over both a 21.77-mile line of railroad in Washoe County, NV, and Lassen County, CA, extending from milepost 338.33 near Flanigan, NV, to milepost 360.10 near Wendel, CA (Flanigan Industrial Lead), and a .57-mile line in Lassen County, CA, from milepost 358.68 to milepost 359.25 near Wendel, CA (Susanville Industrial Lead) (collectively, the Line). Notice of the filing was served and published in the Federal Register on October 30, 2006 (71 FR 63387-88).¹ We will grant the exemption, subject to environmental conditions, standard employee protective conditions, and a historic preservation condition.

On November 2, 2006, Tulare Valley Railroad Company of Salt Lake City, UT (TVRR), filed a formal expression of intent to file an offer of financial assistance (OFA) in order to purchase the 21.77-mile Flanigan Industrial Lead. On November 8, 2006, Nevada Central Railroad (NCR) filed a notice of intent to file an OFA to purchase both the 21.77-mile Flanigan Industrial Lead and the .57-mile Susanville Industrial Lead. Both TVRR and NCR request that UP provide them with financial data and information prescribed in 49 CFR 1152.27(a), including copies of the most recent report on the physical condition of the line, UP's estimate of the net liquidation value of the line, with supporting data, including, but not limited to, identification of the parcels of land underlying the rights-of-way which are owned in fee and those which are easement grants, the lengths, weight, age, and condition of the relay, reroll and scrap rails, the reusable and scrap ties, and any other information deemed relevant to enable the parties to calculate the net liquidation value of the line, and the minimum purchase price UP seeks for the property. No further filing by either party has been made with reference to the OFAs.

¹ In a notice served on November 14, 2006, the October 30 notice was corrected to reflect a facsimile received from UP on November 6, 2006, informing the Board that the Line does contain Federally granted rights-of-way.

BACKGROUND

The majority of the Line from Flanigan to Wendel was constructed by the Fernley and Lassen Railway in 1913 and 1914. The final mile or so of the Flanigan Industrial Lead on the north side of Wendel was constructed by the Nevada-California-Oregon Railway in 1899 and 1900. According to UP, the only revenue-generating traffic on the Line, since July 2004, has consisted of movements of scrap railroad track materials from abandoned UP railroad lines in the area generated by UP salvage contractors. Activity in 2004, 2005, and through early March 2006, stemmed from salvage of a UP abandonment of rail line between Wendel and McArthur, CA. Activity since July and August 2006, stemming from salvage of the abandoned UP line running from Wendel to Susanville, CA, is expected to end shortly. Additionally, a remaining shipper, Sierra Army Depot, which used the Line for only one movement of 29 cars in 2004, has been using another main line of UP and will not be affected by the abandonment.

UP states that it intends to reclassify the Line after abandonment and to sell it for operation as an industrial lead track to a railroad tie disposal contractor located at the southern end of the Line in Flanigan. UP asserts that the Line will be used by the tie disposal contractor to access a steam generating plant at Wendel that burns various salvage wood items, such as processed used railroad ties for generating electricity. UP claims that there is no practical possibility for new rail business on the Line, and that 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 allowing UP to avoid the cost of owning and maintaining a line that will not be used [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because, according to UP, while there are still some movements of salvage material on the line, those movements are expected to end by, or shortly after, the anticipated effective date of a Board decision authorizing abandonment. UP assures that the salvage contractor is aware that the final movements have to be made by truck. The Line carries no overhead traffic that needs to be rerouted. While Sierra Army Depot remains an active customer of UP via another main line by the same facility, that service will not be affected by the proposed abandonment. 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 has submitted environmental and historic reports 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 quality of the human environment. SEA served an environmental assessment (EA) on December 8, 2006, and requested comments by January 8, 2007.

In the EA, SEA sets forth environmental concerns and recommendations for conditions to be imposed on any decision granting abandonment authority. In the EA, SEA notes that the Nevada Division of Environmental Protection, Bureau of Water Pollution Control (BWPC), has indicated that, based on the information provided, Rolling Stock, Stormwater, and 401 permits may be required by UP prior to beginning salvage activities. Therefore, SEA recommends a condition requiring that UP contact BWPC prior to beginning salvage activities to address BWPC's concerns.

Also, SEA states in the EA that the U.S. Department of Commerce, National Geodetic Survey (NGS), has advised that 14 geodetic station markers have been identified that may be affected by the proposed abandonment. Because of this, SEA has recommended a condition requiring that UP contact NGS at least 90 days prior to beginning salvage activities so that NGS may plan for the possible relocation of the geodetic station markers.

In the EA, SEA states that the U.S. Department of the Interior, Fish and Wildlife Service (Sacramento, CA, and Reno, NV offices) (USFWS), has indicated that the endangered Carson wandering skipper (*Pseudocopaeodes eunus obscurus*) (skipper) may be present in the project area. SEA explains that USFWS is aware of at least one existing population of skippers in the Wendel area, and there has been a sighting of the skipper near Flanigan. Given the close proximity of the proposed abandonment to known occurrences of the skipper and the potential presence of suitable habitat, SEA states that USFWS is concerned that the skipper may be present and be affected, directly or indirectly, by the proposed project. Therefore, SEA has recommended a condition requiring that, prior to beginning salvage activities, UP contact USFWS to address concerns about the skipper, and report the results of the consultation in writing to SEA.

In addition to environmental concerns, SEA has made recommendations in reference to the historical background of the land affected by the proposed abandonment. In the EA, SEA has indicated that the Nevada State Historic Preservation Office has requested additional information from UP, and that the California Office of Historic Preservation has not yet completed its review of the proposed abandonment. Accordingly, SEA recommends a condition requiring UP to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed

in the National Register of Historic Places (National Register) until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f) (NHPA), has been completed. SEA also recommends that UP be required to report back to SEA regarding any consultations with the NV SHPO, the CA SHPO, and any other section 106 parties.

No comments to the EA were filed by the due date. 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.

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 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: (1) UP contact BWPC, prior to beginning salvage activities, to address BWPC's concerns; (2) UP contact NGS at least 90 days prior to beginning salvage activities, so that NGS may plan for the possible relocation of the geodetic station markers; (3) UP contact USFWS, prior to beginning salvage activities, to address USFWS's concerns about the skipper and report the results of the consultation in writing to SEA; and (4) UP retain its interest in, and take no steps to alter, the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register until the section 106 process of the NHPA has been completed, and report back to SEA regarding any consultations with section 106 parties.

2. UP must serve a copy of this decision on all shippers located on the Line 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 February 5, 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 February 25, 2007. Petitions to stay must be filed by February 12, 2007, and petitions to reopen must be filed by February 20, 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 January 26, 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