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SERVICE DATE - LATE RELEASE DECEMBER 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 125X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--IN
ORANGE COUNTY, CA

Decided: December 9, 1998

By petition filed on August 24, 1998,¹ 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 3.84-mile line of railroad known as the Los Alamitos Branch extending from milepost 514.26 near Los Alamitos Junction to the end of the line at milepost 518.10 near Los Alamitos, in Orange County, CA. UP also seeks to be exempted from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. The United Transportation Union requests imposition of labor protective conditions. A condition is also requested by the Quarterhorse Racing, Inc., and the Los Alamitos Racing Association, a California general partnership d/b/a Los Alamitos Race Course (LARC). UP replied to LARC's request. In addition, the City of Cypress (the City) filed a letter expressing its interest in the right-of-way.² We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

UP seeks to abandon the line and to discontinue operations because the sole shipper, Barr Lumber, no longer uses the line. According to UP, Barr Lumber ceased receiving shipments of lumber in November 1996, and the spur track leading to Barr Lumber's facility has been removed. UP certified that a copy of the petition was served on Barr Lumber and that it does not oppose the abandonment. There is no overhead traffic on the line.

¹ Notice was served and published in the Federal Register on September 11, 1998 (63 FR 48786).

² The City states that it is beginning the process of determining the future use of the corridor and indicates that it has been contacted by adjacent property owners as well as the Rails-to-Trails Conservancy regarding potential uses. By letter dated October 23, 1998, the Secretary of the Board advised the City of the opportunities under the Board's regulations for filing a request for a public use condition under 49 CFR 1152.28 and/or for trail use/rail banking under 49 CFR 1152.29.

UP states that the line does not require any rehabilitation to meet Federal Railroad Administration Class 1 safety standards. It consists primarily of 75-pound track material and a small quantity of 90-pound rail. After abandonment, UP plans to sell the track material for salvage.

UP submits that a portion of the underlying right-of-way is required for other public purposes by the Los Alamitos Unified School District (School District), which has indicated that it is authorized to acquire the property by eminent domain. The School District has requested expedited approval of the petition.

LARC operates a race track in the City of Cypress. It states that it has used and maintained seven at-grade crossings on the line, which provide necessary connections between parking areas on the south side of the railroad tracks and the horse barns, business offices, and the racing grandstand located on the north side of the railroad tracks. LARC states that these crossings are vital to its continued operations because there is no other means of connecting the parking facilities to the main race track facilities. LARC disputes UP's statement, contained in its environmental report, that the line consists of 25.29 acres, all of which may be non-reversionary, and asserts that there is a good possibility that the right-of-way reverts to the original grantors if it is no longer used for railroad purposes. LARC objects to UP's failure to identify LARC as having an interest in the railroad right-of-way or being adversely affected by the proposed abandonment and subsequent sale of the property to a third party. LARC states that it has attempted to formalize its rights to the seven crossings by filing an application with the California Public Utilities Commission (CPUC), but a CPUC-assigned administrative law judge has stayed proceedings on its application pending action by the Board on UP's petition for exemption. LARC also states that it has attempted to negotiate the purchase of the right-of-way from UP, but UP has refused to consider negotiations pending our action on its petition. LARC urges us to approve the proposed abandonment with the specific condition that UP first preserve the existing seven crossings used by the public to access LARC's property.

DISCUSSION AND CONCLUSIONS

Abandonment Exemption. 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 permitting UP to abandon the line and use its assets more productively elsewhere on its system [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 the only shipper on the line no longer uses it. Nevertheless, to ensure that the shipper is informed of our action, we will require UP to serve a copy of this decision on Barr Lumber within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

LARC's concerns about the abandonment relate to its desire to maintain access to its race track across the right-of-way, which is a land use matter that must be resolved locally.³ The condition requested by LARC is beyond our jurisdiction to impose.⁴ However, we have noted LARC's concern and entered its comment in the environmental docket.

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 the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on October 23, 1998. Comments on the EA were due November 23, 1998.⁵ As indicated, we entered LARC's comment into the environmental docket. SEA has considered the comment and indicates that the concerns raised are not ones that SEA can address. SEA did not recommend imposition of any environmental conditions.

³ See Track Tech, Inc.--Abandonment Exemption--In Adair and Union Counties, IA, Docket No. AB-493 (Sub-No. 7X) (STB served July 2, 1998).

⁴ UP opposes the condition requested by LARC. It states, however, that a representative of UP's Real Estate Department has had preliminary contact with LARC to discuss LARC's desire to retain the crossings on the line and possible sale of the necessary property to LARC after abandonment. UP states that it is willing to continue these discussions during and after the abandonment process has been completed.

⁵ The EA served on October 23, 1998 provided an incorrect due date (October 23, 1998) for the filing of comments. A notice to the parties was served on November 13, 1998, to reflect the correct due date of November 23, 1998.

Based on SEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the line's abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. No one sought a public use condition, and none will be imposed.

OFA and Public Use Exemptions. Because we are not imposing a public use condition, UP's request for an exemption from the public use provisions of 49 U.S.C. 10905 is moot. In support of its request for an exemption from the OFA provisions of 49 U.S.C. 10904, UP points out that the School District seeks to acquire, and UP has agreed to convey, a portion of the right-of-way consisting of a strip of property that is approximately 60 feet wide by 1,014 feet long (approximately 60,840 square feet or 1.4 acres) running between the School District's middle school site and elementary school site and extending east beyond the easterly boundary of these school sites an additional 254 feet. Absent an exemption from the OFA provisions, UP argues that it will be unable to promptly consummate the abandonment authority and convey the underlying right-of-way.

UP's request for exemption from the OFA provisions will be denied. Exemptions from these provisions are granted from time to time, but there must be a compelling need to use the property for a valid public purpose and no overriding public need for continued rail service.⁶ While UP makes this argument, in this case it proposes to transfer only a portion of the right-of-way, not the entire 3.84 miles, to the School District. Moreover, the School District's immediate need for the property in order to commence construction on a project that is not scheduled for completion until December 1999, does not appear to provide sufficient reason to foreclose the OFA process. Likewise, the School District's request that we make the exemption effective on December 12, 1998, one day after service of the decision approving the exemption in order to avoid a December 14, 1998 trial date in its eminent domain action against UP, is not persuasive.

Normally, an exemption becomes effective 30 days after the decision granting the exemption is served. This allows time for the OFA process and to permit any interested parties time to file a petition to stay. As discussed above, we have declined to exempt UP from the OFA provisions of 49 U.S.C. 10904. OFAs are due 10 days after service of a Board decision granting the exemption. 49 CFR 1152.27(2). In addition, UP is required to serve a copy of this decision on Barr Lumber within 5 days after the service date, so stay requests will not be due until 15 days after service. We conclude that the public is best served by not cutting short the regulatory process which is designed to protect the public's interest in continued rail service.

⁶ See Norfolk and Western Railway Company--Abandonment Exemption--In Cincinnati, Hamilton County, OH, Docket No. AB-290 (Sub-No. 184X), slip op. at 11 (STB served May 13, 1998).

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 in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

2. UP is directed to serve a copy of this decision on Barr Lumber 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 December 21, 1998, 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 \$1,000. 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 January 10, 1999. Petitions to stay must be filed by December 28, 1998, and petitions to reopen must be filed by January 5, 1999.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file 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 December 11, 1999, 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 Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary