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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33821

UNION PACIFIC RAILROAD COMPANY--TRackage RIGHTS EXEMPTION--
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Decided: December 6, 1999

On November 30, 1999, Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights over a line of railroad of Elgin, Joliet and Eastern Railway Company (EJ&E), between Joliet, IL (milepost 1.8), and Waukegan, IL (milepost 75), a distance of approximately 76 miles. As pertinent here, the line passes through West Chicago, IL (milepost 29). Under the Board's regulations at 49 CFR 1180.4(g), the parties may consummate the transaction on or after December 7, 1999.

On December 3, 1999, the City of West Chicago (City) and Joseph Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), filed petitions to stay the scheduled effective date of the subject trackage rights pending UP's filing of an environmental report, an opportunity for public comments, and the Board's issuance of an environmental assessment and decision. The City's petition is motivated by a concern about possible adverse effects on public safety resulting from increased train traffic. UTU-IL expresses concern about the environmental impact and the impact on rail employees. The UP replied to both petitions.

The standards governing disposition of a petition for stay are: (1) whether a petitioner is likely to prevail on the merits; (2) whether a petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other interested parties; and (4) whether issuance of a stay is in the public interest. See, e.g., Hilton v. Braunskill, 481 U.S. 770 (1986); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

The City and UTU-IL have failed to demonstrate entitlement to a stay under the governing criteria, and, accordingly, their request will be denied.

Likelihood of prevailing on the merits. Under the Board's regulations implementing environmental laws, no environmental documentation normally is prepared in trackage rights acquisition proceedings. 49 CFR 1105.6(c)(4). Nevertheless, under 49 CFR 1105.6(d), for actions that generally require no environmental documentation, the Board may decide that a particular action has the potential for significant environmental impacts and that, therefore, the applicants or petitioners should provide an environmental report. In those circumstances, the Board would then

prepare either an environmental assessment or an environmental impact statement. Here, however, the petitioners have not demonstrated the existence of facts that warrant a Board finding that the proposed action has the potential for significant environmental impacts.

Petitioners state that there is good reason to believe that the proposed trackage rights will result in an increase of more than eight trains per day over EJ&E's line in West Chicago either immediately, or upon completion of a connection necessary for eastbound movements toward Joliet via West Chicago, or in conjunction with a future trackage rights proposal covering EJ&E trackage east of Joliet. UP has reiterated in reply its statement that the trackage rights it proposes to implement in this proceeding will not result in an increase in eight or more trains per day. UTU-IL's argument is that this agreement is similar to one proposed by UP on August 21, 1996, in STB Finance Docket No. 32985. As UP noted in its reply, the instant rights are far less extensive than those that were proposed in 1996. UP's reply indicates that implementation of the rights at issue here will reduce the number of grade crossings in West Chicago by eliminating less efficient routings.

A key element underlying the petitioners' assertion that traffic will increase is the existence of a "facing point connection." That connection, however, has not been constructed. The City also expresses concern about an anticipated future extension of trackage rights to the EJ&E's eastern terminus. Should the petitioners be able to substantiate these concerns, they may form the proper basis for a petition for revocation or reconsideration or a petition in connection with future trackage rights filings if evidence in connection with those proposals would support a finding that there is a potential for significant environmental impacts. At this juncture, however, petitioners have fallen far short of demonstrating that they are likely to prevail in such a request.

UTU-IL also contends that UP has failed to comply with Board requirements governing labor protection. This contention has no merit, as UP has made the indication required under 49 CFR 1180.4(g)(1).

Irreparable harm. As the discussion above indicates, most of the increased traffic that petitioners claim will arise can only occur in the future if other events occur. Therefore, no irreparable harm will arise upon the effectiveness of the notice. The City argues that, "If UP were to route additional trains over EJ&E grade crossings in West Chicago that are inadequately protected with warning devices in light of the increased train traffic, there would be significant risk of serious injury or death of West Chicago citizens." The statement is conditional, and it assumes the existence of grade crossings that are inadequately protected. The City has not demonstrated that there are any such grade crossings. This element does not support a grant of a stay.¹

¹ UP contends that, in seeking a stay, the City is breaching a recent agreement with the railroad. This is a matter to be addressed by the courts, not the Board.

Harm to other parties. The City argues that UP would not be substantially harmed by the issuance of a stay because railroads already have voluntarily delayed implementation of the trackage rights. UP takes exception to this argument, stating that it has delayed filing in order to negotiate an accommodation with the City. In any event, the rights are designed to reduce rail traffic congestion in the Chicago area. Thus, delay in implementing the rights will delay the realization of these benefits.

Public interest. Finally, the petitioners argue that a stay would be in the public interest inasmuch as it would ensure the safety of the public at large and rail employees. Petitioners have speculated, but have advanced nothing to show, that consummation of the subject transaction would, in fact, endanger the public safety. On the other hand, the change in operations proposed is intended to increase the efficiency of rail operations in the Chicago area and reduce congestion throughout the area. A consideration of this element does not support a grant of the stay request.

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

It is ordered:

1. The petitions for stay are denied.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary