

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 105X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN KANE COUNTY, IL

Decided: April 17, 1997

By petition filed December 24, 1996, 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 a 2.8-mile segment of the East Elgin Industrial Lead between milepost 41.0 near Elgin Junction and milepost 43.8 near East Elgin, in Kane County, IL. UP also seeks an exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904. A request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed by the City of Elgin, IL (the City). The United Transportation Union seeks imposition of labor protective conditions. We will grant the requested exemptions, and issue a NITU, subject to public use, environmental and standard employee protective conditions.

BACKGROUND

UP states that the purpose of the abandonment is to convey the underlying real estate to the City for use as a trail. The line is maintained at Federal Railroad Administration minimum class 1 safety standards and there are 22 public road crossings, totaling 1,469 track feet, within the limits of this abandonment proposal. UP states that rehabilitation of these crossings could cost up to \$500,000. Abandonment of the line will avoid the cost of rehabilitation of the public road crossings, as well as maintenance expenses on the line, and, at the same time, permit the City's acquisition of the underlying right-of-way for a public purpose.

In the past, service was provided to three shippers on the line: Seigle's Home & Building Center (SH&BC), Northern Illinois Brick, Inc., and Allenton Lumber Company. UP states that SH&BC has moved to a new facility and no longer requires rail service from its previous location on the line and that the City has acquired the property of the two remaining shippers.¹ Accordingly, UP submits that the abandonment will have no effect on service to shippers.

DISCUSSION AND CONCLUSIONS

Abandonment exemption. Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board 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. Exempting the proposed transaction will minimize the need for Federal regulatory control over rail transportation and the time and expense of the application process thereby reducing regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. In addition, by allowing UP to avoid the expense of maintaining the line and rehabilitating the road crossings and to apply its assets more productively elsewhere on its system, an exemption will promote safe and efficient rail

¹ UP's pleading includes a December 12, 1996 letter from SH&BC supporting the abandonment. The letter also states that SH&BC's associated company, Helmsley, Inc., owner of the properties where SH&BC's plant is located, has entered into an agreement with the City to sell the relevant properties. Also, by letter dated December 16, 1996, the City substantiates UP's claim that the City has acquired the properties of the remaining two shippers.

transportation, foster sound economic conditions and encourage efficient management consistent with 49 U.S.C. 10101(3), (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 an abuse of market power because there are no longer any rail customers located on the line.²

Labor Protection. 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).

Environmental condition. 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 action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on February 25, 1997.

In the EA, SEA noted that the U. S. Department of Commerce, National Geodetic Survey (NGS), has identified one geodetic survey marker that may be affected by the proposed abandonment. Accordingly, SEA recommends that a condition be imposed requiring UP to notify NGS if the geodetic station marker, designation Z 17, PID NH0190, will be disturbed or destroyed by salvage activities. No comments to the EA were filed by the March 24, 1997 due date. Based on SEA's recommendation, which we adopt, we conclude that the proposed abandonment, if implemented subject to the condition discussed above, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Trail use. The City requests that interim trail use/rail banking be imposed under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and has submitted a statement of willingness to assume financial responsibility for the right-of-way as required under 49 CFR 1152.29. By letter filed January 23, 1997, UP states that it is agreeable to a trail use condition. Although a request for interim trail use need not be filed under 49 CFR 1152.29(b)(2) until 10 days after the notice of exemption is published in the *Federal Register*, the criteria for imposing interim trail use/rail banking under the Trails Act have been met. Accordingly, we will accept the trail use request and UP's response and issue a NITU for the described line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, 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.

Our issuance of the NITU does not preclude other parties from filing interim trail use requests within 10 days after publication of the notice in the *Federal Register*. Nor does it preclude UP from negotiating with other parties in addition to the City during the NITU period. If, within the 10-day period following publication, additional trail use requests are filed, UP is directed to respond to them.

Public use. The City also requests imposition of a 180-day public use condition precluding UP from: (1) disposing of the rail corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts and tunnels. The City states that the corridor intersects with the downtown area and will connect with an already existing trail system along the Fox River. According to the City, the corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans.

² Given our market power finding, we need not determine whether the proposed abandonment with respect to 2.8 miles of rail line in a single county and state is limited in scope.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The City has met the public use criteria by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the time period. 49 CFR 1152.28(a)(2). A 180-day public use condition will be imposed, commencing with the effective date of this decision and notice. The public use negotiating period cannot be extended.

Also, we note that a public use condition is not imposed for the benefit of any one potential user. Rather, it gives any interested person an opportunity to pursue acquisition of a right-of-way found suitable for public purposes, including trail use.

Other exemptions. To expedite the post-abandonment transfer of the right-of-way needed by the City, UP requests that the abandonment be exempted from the OFA requirements of 49 U.S.C. 10904.

Exemptions from 49 U.S.C. 10904 have been granted from time to time, but only when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.³ UP has shown that the right-of-way is needed for a valid public purpose, i.e., interim trail use. There are no active shippers on the line, and, therefore, there is no overriding public need for continued rail service. On the other hand, imposition of the OFA procedures could only delay the transfer of the line to the City for a valid public use. Accordingly we will grant an exemption from the OFA requirements of 49 U.S.C. 10904.⁴

It is ordered:

1. The requests for the opportunity to negotiate for interim trail use/rail banking under 49 U.S.C. 1247(d) and for a public use condition under 49 U.S.C. 10905 are accepted.

2. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903-04, 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), and the conditions that: (1) UP notify the U. S. Department of Commerce, NGS, if the geodetic station marker, designation Z 17, PID NH0190, will be disturbed or destroyed by salvage activities; (2) UP shall keep intact the corridor (except the tracks, ties and signal equipment) and all of the right-of-way and related structures, such as bridges, trestles, culverts and tunnels, for 180 days from the effective date of this decision and notice to enable any state or local government agency or other interested person to negotiate the acquisition of the right-of-way for public use; and (3) UP shall comply with the interim trail use/rail banking procedure set forth below. If an interim trail use/rail banking agreement is executed before the 180-day public use period expires, the public use process will be terminated as follows: if the trail use agreement covers the entire line, the public use process is terminated; if, however, a trail use agreement is executed only for a segment of the line, the public

³ See *K&E Railway Company--Abandonment Exemption--In Alfalfa, Garfield, and Grant Counties, OK, and Barber County, KS*, STB Docket No. AB-480X (STB served Dec. 31, 1996), slip op. at 4, citing *Southern Pacific Transportation Company--Discontinuance of Service Exemption--In Los Angeles County, CA*, Docket No. AB-12 (Sub-No. 172X), *et al.* (ICC served Dec. 23, 1994); *Missouri Pacific Railroad Company--Abandonment--In Harris County, TX*, Docket No. AB-3 (Sub-No. 105X) (ICC served Dec. 22, 1992); *Chicago & North Western Transportation Company--Abandonment Exemption--In Blackhawk County IA*, Docket No. AB-1 (Sub-No. 226X), *et al.* (ICC served July 14, 1989); and *Iowa Northern Railway Company--Abandonment--In Blackhawk County, IA*, Docket No. AB-284 (Sub-No. 1X) (ICC served Apr. 1, 1988).

⁴ Having exempted this proposed abandonment from 49 U.S.C. 10904, we have eliminated the need to extend the effective date of the abandonment exemption to consider OFAs.

use process is terminated only for that line segment.

3. Subject to the conditions set forth above, UP may discontinue service and salvage track and track materials consistent with trail use/rail banking after the effective date of the exemption.

4. 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 its transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad from any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

5. 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.

6. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, 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.

8. UP must serve a copy of this decision on the three former shippers within 5 days after the decision is served and certify to the Board that it has done so.

9. Notice will be published in the *Federal Register* on April 29, 1997.

10. This exemption will be effective May 29, 1997.

11. Requests for trail use/rail banking under 49 CFR 1152.29 must be filed by May 9, 1997, petitions to stay must be filed by May 14, 1997, and petitions to reopen must be filed by May 27, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary