

SERVICE DATE - MAY 15, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-439 (Sub-No. 2X)

DALLAS AREA RAPID TRANSIT--ABANDONMENT EXEMPTION--
IN DALLAS AND COLLIN COUNTIES, TX

STB Docket No. AB-12 (Sub-No. 191X)

SOUTHERN PACIFIC TRANSPORTATION COMPANY--DISCONTINUANCE OF
TRACKAGE RIGHTS EXEMPTION--IN DALLAS AND COLLIN COUNTIES, TX

STB Docket No. AB-39 (Sub-No. 22X)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY--DISCONTINUANCE OF
TRACKAGE RIGHTS EXEMPTION--IN DALLAS AND COLLIN COUNTIES, TX

Decided: May 6, 1997

Dallas Area Rapid Transit (DART),¹ Southern Pacific Transportation Company (SPT),² and St. Louis Southwestern Railway Company (SSW)³ (collectively, petitioners) jointly seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit DART to abandon an 18.67-mile line of railroad, consisting of 15.45 miles of the White Rock/Plano line, and 3.22 miles of a connecting branch line, the Soumethun Branch, and to permit SPT and SSW to discontinue their local and overhead trackage rights on the White Rock/Plano line. The United Transportation Union seeks imposition of labor protective conditions. We will grant the petition subject to a historic condition and standard labor protective conditions.

BACKGROUND

The White Rock/Plano line extends between milepost 6.94 at Tenison Park and milepost 13.74 at Gifford Junction in Dallas (the White Rock Segment) and between milepost 273.00 at

¹ DART, a rail common carrier, is a political subdivision of the State of Texas charged with the responsibility of developing and operating a public transit system in the Dallas, TX area. It currently owns approximately 76 miles of rail line in the Dallas metropolitan area. DART controls Dallas Area Rapid Transit Property Acquisition Corporation (DARTPAC), a rail common carrier, which is a non-stock, non-profit corporation formed by DART to acquire and manage rail properties. *See Dallas Area Rapid Transit--Control Exemption--Dallas Area Rapid Transit Property Acquisition Corporation*, Finance Docket No. 31778 (ICC served Dec. 12, 1990).

² SPT, a Class I rail carrier, operates approximately 11,000 miles of railroad in Arizona, California, Louisiana, Nevada, New Mexico, Oregon, Texas, and Utah. As a result of the authority granted in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control & Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760 (ICC served Aug. 12, 1996) and consummated on September 11, 1996, SPT is a wholly owned subsidiary of Union Pacific Holding Company, Inc. (itself a subsidiary of Union Pacific Corporation (UP)) and a component of the UP rail system.

³ SSW, a Class I rail carrier, operates approximately 2,200 miles of railroad in Arkansas, Illinois, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas. SSW is a subsidiary of SPT and now also a component of the UP rail system.

Gifford Junction⁴ and milepost 281.65 at Plano Parkway in Plano, TX (the Plano Segment). At Gifford Junction, the White Rock/Plano line connects with the Soumethun Branch, which extends from milepost 273.00 to the end of the track at milepost 269.78 at Lovers Lane in Dallas.

The Plano Segment and the Soumethun Branch previously were part of an SPT route extending into downtown Dallas from the north. The line south of the Soumethun Branch into Dallas has already been abandoned, and that right-of-way is now used by DART as a light rail transit line. The line north of the Plano Segment connects with an SPT line extending further north to McKinney and Denison, TX,⁵ and with an east-west DARTPAC/SSW line between Fort Worth and Wylie, TX. The White Rock Segment previously functioned as a belt line around Dallas, and connected with another SPT line at Tenison Park.

In 1988, DART acquired the White Rock/Plano line and the Soumethun Branch from SPT,⁶ granted back to SPT local trackage rights on the White Rock/Plano line,⁷ and granted overhead trackage rights on the White Rock/Plano line to SSW.⁸

According to petitioners, no rail operations have been conducted on the Soumethun Branch since DART acquired it. As for the White Rock/Plano line, no rail operations have been conducted on the White Rock Segment since November 1993,⁹ and no rail traffic has moved on the Plano Segment since November 1995, when the sole remaining shipper, Associated Freezers, Inc., obtained access to an adjacent rail line of the Kansas City Southern Railway Company (KCS).

Petitioners state that the proposed abandonment and discontinuance will allow DART to use the rights-of-way of the Soumethun Branch and the Plano Segment for a proposed North Central Corridor extension of its light rail transit system from Park Lane to Plano. Planning for the North Central Corridor project is in the advanced stages, and a draft environmental impact statement on the project was issued by DART and the U.S. Department of Transportation, Federal Transit Administration on October 15, 1996. DART states that it will hold the right-of-way of the White Rock Segment for other potential long-term development.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned and operations may not be discontinued 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.

⁴ Milepost 13.74 and milepost 273.00 designate the same point at Gifford Junction.

⁵ The line extending from the north end of the Plano Segment to milepost 285.10 at Spring Creek Parkway in Plano is owned by DART and operated by SPT pursuant to trackage rights.

⁶ *See Dallas Area Rapid Transit--Acquisition and Operation Exemption--Rail Lines of Southern Pacific Transportation Company*, Finance Docket No. 31267 (ICC served May 20, 1988).

⁷ *See Southern Pacific Transportation Company--Trackage Rights Exemption--Dallas Area Rapid Transit*, Finance Docket No. 31270 (ICC served May 20, 1988).

⁸ *See St. Louis Southwestern Railway Company--Trackage Rights Exemption--Dallas Area Rapid Transit*, Finance Docket No. 31278 (ICC served May 20, 1988); *see also St. Louis Southwestern Railway Company--Discontinuance of Service--In Colin and Dallas Counties, TX*, Docket No. AB-39 (Sub-No. 11X) (ICC served July 27, 1988).

⁹ The White Rock segment has been severed by a city street-widening project at Park Lane.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. By allowing DART to avoid maintenance and operating costs on lines which generate no traffic and which are not currently operated, an exemption will promote a safe and efficient rail transportation system, foster sound economic conditions in transportation, ensure effective competition and coordination between rail carriers and other transportation modes, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. In addition, by facilitating the proposed North Central Corridor extension of DART's light rail transit system, an exemption will promote energy conservation [49 U.S.C. 10101(14)]. 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 line's only active shipper now receives all of its rail service from KCS. Similarly, no service has been provided on the White Rock Segment for the past 3 years, and none has been provided on the Soumethun Branch for the past 6 years. Nevertheless, to ensure that Associated Freezers, Inc., is notified of our action, we will direct DART to serve a copy of this decision on the shipper within 5 days of the service date of this decision and certify to us that it had done so. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the 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 this exemption, we will impose the employee protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979).

Petitioners have submitted a combined environmental report with their petition and have 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 the data it contains, and analyzed the probable effect of the proposed action on the quality of the human environment. In an environmental assessment (EA) served March 26, 1997, SEA indicated that the Texas State Historic Preservation Officer has determined that the White Rock Creek Bridge, at milepost 273.3, is eligible for inclusion in the National Register of Historic Places. Therefore, SEA recommends that we impose a condition requiring DART to retain its interest in and take no steps to alter the historic integrity of the White Rock Creek Bridge until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

No comments to the EA were filed by the April 21, 1997 due date. Accordingly, based on SEA's recommendation, we conclude that the proposed abandonment and discontinuance, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Although SEA has indicated that parts of the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has requested a public use condition and none will be imposed. Nevertheless, we will provide a 20-day period after *Federal Register* publication for interested persons to request a public use condition.

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 DART of the above-described line and the discontinuance by SPT and SSW of their trackage rights over the line, subject to: (a) the employee protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979); and (b) the condition requiring DART to retain its interest in and take no steps to alter the historic integrity of the White Rock Bridge until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. Notice will be published in the *Federal Register* on May 15, 1997.

3. DART is directed to serve a copy of this decision on Associated Freezers, Inc., within 5 days after service of this decision and to certify to us that it has done so.

4. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 14, 1997.

5. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)¹⁰ must be filed by May 23, 1997; petitions to stay must be filed by May 30, 1997; requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by June 4, 1997; and petitions to reopen must be filed by June 9, 1997.

6. If a formal expression of intent to file an OFA has been timely submitted, an OFA to allow rail service to continue must be received by the railroad and the Board within 30 days after publication, subject to time extensions authorized under 49 CFR 1152.27(c)(2)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2). Each OFA must be accompanied by the filing fee, which currently is set at \$900. *See* 49 CFR 1002.2(f)(25).

7. OFAs and related correspondence to the Board must refer to these proceedings. The following notation must be typed in bold face on the lower left-hand corner of the envelope: “**Office of Proceedings, AB-OFA.**”

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

¹⁰ *See Exempt. Of Rail Abandonment--Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), for regulations in effect at the time of filing of the exemption petition. We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued final rules in *Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903*, STB Ex Parte No. 537 (STB served Dec. 24, 1996), that became effective on January 23, 1997. Because we have processed the exemption under the former regulations, we will continue to use the former regulations in this proceeding to process an OFA, if one is filed.