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SERVICE DATE – LATE RELEASE DECEMBER 12, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 274X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN  
POTTAWATTAMIE COUNTY, IA

STB Docket No. AB-414 (Sub-No. 4X)

IOWA INTERSTATE RAILROAD, LTD.—DISCONTINUANCE OF SERVICE  
EXEMPTION—IN POTTAWATTAMIE COUNTY, IA

Decided: December 12, 2008

In an amended petition filed on August 25, 2008, Union Pacific Railroad Company (UP) and Iowa Interstate Railroad, Ltd. (IAIS) (collectively, petitioners)<sup>1</sup> jointly seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit: (1) UP to abandon and discontinue service over its line of railroad known as the Great Western Industrial Lead (UP line) from milepost 503.6 to milepost 504.05, a distance of approximately 0.45 miles, in Pottawattamie County, IA; (2) IAIS to discontinue trackage rights over the UP line; and (3) UP to discontinue its overhead trackage rights over IAIS's line of railroad known as the Main Line (IAIS line) from milepost 486.8 to milepost 488.0, a distance of approximately 1.2 miles, in Pottawattamie County.<sup>2</sup> Notice of the filing was served and published in the Federal Register on September 12, 2008 (73 FR 53073). The Board is denying the petition for exemption because petitioners have failed to demonstrate that the interests of the shippers receiving service via the trackage will be protected under the proposed substitute arrangement.

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<sup>1</sup> Petitioners originally filed their petition for exemption on August 19, 2008. On August 25, 2008, petitioners filed an amended petition for exemption. Because the amended petition for exemption was received on August 25, 2008, that date will be considered the official filing date.

<sup>2</sup> UP and IAIS filed the trackage rights agreement covering IAIS's trackage rights on the UP line in Iowa Interstate Railroad, Ltd. and Union Pacific Railroad Company—Joint Relocation Project Exemption—in Council Bluffs, Pottawattamie County, IA, STB Finance Docket No. 33883 (STB served June 30, 2000).

## BACKGROUND

According to petitioners, the UP line was originally constructed in 1901 by the Mason City and Fort Dodge Railroad. Its track, which is maintained as excepted track, contains 85-pound jointed rail, laid second-hand in 1961. Petitioners state that the UP line is located on property owned by Red Giant Oil Co. (Red Giant) and does not contain any Federally granted rights-of-way or reversionary property. The IAIS line, which is located approximately 400 feet west of the UP line, connects to the UP line via a short industrial track available to both UP and IAIS. Under a trackage rights agreement with IAIS, UP has overhead rights to use the IAIS line for the sole purpose of accessing the UP line, which is not connected to the rest of the UP network by UP-owned trackage. According to petitioners, UP has not used these rights in 2 years because IAIS has been the sole service provider on the UP line, carrying traffic for Red Giant and Midwest Walnut Company (Midwest), the only shippers on the line. Petitioners state that UP's proposed abandonment and IAIS's proposed discontinuance of trackage rights on the UP line would remove the encumbrance that the UP line would potentially pose to Red Giant, as Red Giant would acquire UP's right-of-way. Upon consummation of the abandonment and discontinuance, Petitioners state that the UP line would continue to exist, but as private industrial track owned by Red Giant. Petitioners assert that this would enable Red Giant to modify and expand its operations and allow Red Giant the freedom and flexibility to use its property as it sees fit. Petitioners further assert that IAIS would continue to use the UP line, once it becomes Red Giant's private property and industrial track, to continue to serve Red Giant and Midwest even though neither IAIS nor UP would retain a common carrier obligation to do so. Petitioners state that other shippers in the area will continue to receive rail service via the existing IAIS line. Because UP does not plan to serve any customers on the line following abandonment, and IAIS would remain the sole provider of service on the line, UP would have no need to retain trackage rights over the IAIS line, which provides the only rail access to the UP line.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without our prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds 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.

Petitioners have not attempted to justify the proposed abandonment and discontinuance by citing any operating burdens based on revenues from the current operations or the costs of providing service. Instead petitioners have based their arguments in favor of abandonment and discontinuance on the fact that Red Giant and Midwest could continue to receive service from IAIS over the Red Giant property, despite acknowledging that IAIS would have no common carrier obligation to provide such service (which means that service could end at any time without Board authorization and shippers would lose their regulatory remedies for service

failures or inadequacies). Petitioners have not provided any details of an agreement or even discussions with the shippers regarding petitioners' proposed future service arrangements.<sup>3</sup> Nor have they provided statements from Midwest or Red Giant to reflect the shippers' acquiescence in petitioners' plans.<sup>4</sup> Under the circumstances, we are unable to conclude that scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. We are similarly unable to find that regulation of the proposed transaction under 49 U.S.C. 10903 is not necessary to protect shippers from the abuse of market power.

The Board has 110 days from the date of filing a petition or application for abandonment to issue a decision on the merits. See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311, 313 (1997), aff'd, Nat'l Ass'n of Reversionary Prop. Owners v. STB, 158 F.3d 135 (D.C. Cir. 1998); 49 CFR 1152.27(b)(2). Congress has made clear that carriers that believe they are burdened by unprofitable lines should be able to seek their abandonment promptly. The carrier controls the presentation of its case and we expect submissions to be sufficient to permit us to decide the petition or application within 110 days. Here the petitioners have not met that burden. The petition for exemption will therefore be denied.

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

It is ordered:

1. The jointly filed petition for exemption is denied without prejudice to the petitioners' filing an application or a properly supported petition for exemption for abandonment and discontinuance.

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<sup>3</sup> Petitioners' combined environmental and historic report fails even to include mention of Midwest as a shipper on the line.

<sup>4</sup> See The Cincinnati, New Orleans and Texas Pacific Railway Company—Abandonment Exemption—in Roane County, TN, STB Docket No. AB-290 (Sub-No. 280X) (STB served Feb. 23, 2007).

2. This decision is effective on the date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan  
Acting Secretary