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SERVICE DATE - JUNE 8, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 118X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN EL PASO COUNTY, CO

Decided: June 2, 1998

By petition filed on February 18, 1998, 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 3.07-mile line of railroad known as the Templeton Gap Spur (herein, the Line), extending from the end of the line at milepost 602.70 (North Academy Boulevard) to milepost 605.77, in Colorado Springs, El Paso County, CO (the Line). Notice of the institution of an exemption proceeding was published in the Federal Register at 63 FR 11708 on March 10, 1998. On March 5, 1998, the City of Colorado Springs (the City) filed a letter in support of the proposed abandonment. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the petition, subject to labor protective conditions and an environmental condition.

BACKGROUND

The Line was part of a line of railroad previously owned by the Chicago, Rock Island & Pacific Railroad (Rock Island). The Rock Island originally extended westward from Limon to Colorado Springs, CO, where it connected with the north-south line of The Denver and Rio Grande Western Railroad Company (DRGW). When the Rock Island ceased operations in 1978, DRGW became the owner of the Line. In 1989, the City purchased from DRGW the right-of-way underlying the track structure. DRGW later merged into UP in 1996.¹ UP states that DRGW had previously agreed to seek abandonment authorization for the Line in accordance with an established timetable,² which has been extended to October 1, 1998.

¹ See Union Pacific Corporation, et al.--Control and Merger--Southern Pacific Rail Corporation, et al., Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996).

² The DRGW had previously sought to abandon the Line under the class exemption procedures at 49 CFR 1152 Subpart F--Exempt Abandonments. The notice of exemption was rejected by the former Interstate Commerce Commission (ICC) because evidence indicated that local traffic had moved over the line during the prior two years. Because DRGW also claimed the line to be a spur, DRGW was invited to file a petition for declaratory order in the event it continued to desire an agency opinion concerning whether the line was a spur track. See Denver and Rio Grande Western Railroad Company--Abandonment Exemption--Colorado Springs, CO, Docket No. AB-8 (Sub-No. (continued...))

In any event, UP states that the Line has been used by only one shipper, Drywall Products, Inc., and that rail service to Drywall has been on an as-needed basis. According to UP, Drywall has agreed not to oppose the proposed abandonment.³ Indeed, no comments or protests have been received.

Authority to abandon will permit UP to honor the commitment made by DRGW. The City already owns the Line's underlying right-of-way, which the City plans to develop as a linear park and trail corridor.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without 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 of the proposed abandonment under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of abandoning this line, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Moreover, by allowing UP to avoid the expenses of operating and maintaining a lightly used line of railroad and to apply its assets more productively elsewhere on its rail system, an exemption will promote safe and efficient rail transportation, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Because no shipper opposes the proposed abandonment and there appear to be alternative forms of transportation available, we find that regulation is not necessary to protect shippers from an abuse of market power. Nevertheless, to ensure that shippers are informed of our decision, we will direct UP to serve a copy of this decision on Drywall and PCBS within 5 days of the service date of

²(...continued)

14X) (ICC served Oct. 7, 1987). After DRGW made such a filing, the ICC found that the Line was not an exempt spur track. See City of Colorado Springs and Metex Metropolitan District - Petition for Declaratory Order--Abandonment Determination, Finance Docket No. 31271, et al. (ICC served Mar. 31, 1989).

³ UP further states that Drywall subsequently sold its business (but not its facility) to Pacific Coast Builders Supply (PCBS). Assertedly, PCBS is aware of this petition and has indicated to UP that it will not oppose the proposed abandonment.

this decision and to 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.

UTU requests imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

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 its data, and analyzed the probable effect of the proposed action on the quality of the human environment. In the environmental assessment (EA) served on April 17, 1998, SEA indicated that the National Geodetic Survey (NGS) has identified two geodetic station markers that may be affected by the proposed abandonment. SEA, therefore, recommends that we impose a condition requiring UP to notify NGS at least 90 days prior to any salvage activities that may disturb or destroy these markers so that plans can be made for their relocation. No comments were filed in response to the EA. Based on SEA's recommendation, which we adopt, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or conservation of energy resources.

Although SEA has indicated that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.⁴

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 3.07-mile rail line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); and (2) the condition that UP notify NGS at least 90 days prior to any salvage activities that may disturb or destroy these markers so that plans can be made for their relocation.

2. UP must serve a copy of this decision on Drywall and PCBS within 5 days after the service date of this decision and certify to the Board that it has done so.

⁴ Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by March 30, 1998.

3. An OFA under 49 CFR 1152.27(c)(1)⁵ to allow rail service to continue must be received by the railroad and the Board by June 18, 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 a \$1,000 filing fee. 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 on July 8, 1998. Petitions to stay must be filed by June 23, 1998. Petitions to reopen must be filed by July 6, 1998.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a 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 June 9, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not 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

⁵ See 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, and June 27, 1997).