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SERVICE DATE - LATE RELEASE FEBRUARY 16, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 141X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN PIMA COUNTY, AZ

Decided: February 15, 2000

By petition filed October 29, 1999,¹ 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 1.92-mile line of railroad, known as the South Drill Track, extending from milepost 982.78 to the end of the line at milepost 984.70, near Tucson, in Pima County, AZ. UP also seeks an exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the exemption from 49 U.S.C. 10903-05, subject to environmental and standard employee protective conditions.

BACKGROUND

The South Drill Track was constructed in the early 1900s. UP acquired the line on February 1, 1998, when Southern Pacific Transportation Company (SP) was merged into UP, pursuant to Board authority granted in the UP/SP merger.² The line, which extends in a north-south direction, is located between Interstate Highway 10 and UP's main line to El Paso, TX. According to UP, the only shipper on the line, Western Emulsions, plans to relocate its facility to another UP line and does not oppose the abandonment. There is no overhead traffic on the line.

UP asserts that rehabilitation costs totaling \$224,708 are necessary to bring the line, which is classified as excepted track, up to Federal Railroad Administration (FRA) Class 1 safety standards. After rehabilitation, the annual normalized maintenance costs to maintain the line in FRA Class 1 condition are projected to total \$32,799, or \$17,083 per mile.

¹ Notice of the filing was served and published in the Federal Register on November 18, 1999 (64 FR 63106).

² Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and 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, Decision No. 44 (STB served Aug. 12, 1996).

UP states that it conveyed the right-of-way to the City of Tucson (the City) on July 16, 1999, and retained an unrestricted easement for operating over the line. After abandonment, the City plans to use the entire right-of-way, unencumbered by the track structure, to complete the frontage road required to expand Interstate 10. Reportedly, Interstate 10 is the only freeway in Tucson, is a key transportation corridor for metro commuter traffic, and, with Interstate 19, is the key north-south Canada/Mexico corridor route in Arizona. Accordingly, both the City and UP request expedited approval of the abandonment proposal.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our 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 under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving UP from the cost of owning and maintaining a line that will not be in use after the sole shipper relocates [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power because the only shipper on the line does not object to the proposed transaction and will continue to receive UP rail service at another location.³ Nevertheless, to ensure that Western Emulsions is informed of our decision, we will require UP to serve a copy of this decision on the shipper within 5 days of the service date and to certify to us that it has done so.

As stated earlier, UTU requests the imposition of labor protective conditions. 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).

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

³ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on December 28, 1999.

In the EA, SEA indicates that the U.S. Fish and Wildlife Service (FWS) has identified twenty-four endangered, threatened, proposed, or candidate species that potentially occur in Pima County. Therefore, SEA recommends that a condition be imposed prohibiting UP from salvaging or disposing of any part of the right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531. SEA also notes that the U.S. Army Corps of Engineers (Army Corps) has not completed its review of the proposed abandonment. Therefore, SEA recommends that UP consult with the Army Corps prior to salvage of the line to determine if the proposed project is consistent with applicable Federal, state and local water quality standards, and if permits are required under section 404 of the Clean Water Act. Finally, SEA notes that the Arizona Department of Environmental Quality (ADEQ) has expressed concern regarding soil contamination along the right-of-way. Accordingly, SEA recommends that prior to any salvage activity, UP further consult with ADEQ to determine the necessary corrective actions to remediate or remove all soils contaminated as a result of railroad activity along the right-of-way.

No comments to the EA were filed by the January 27, 2000 due date. We will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As previously noted, due to the City's need to use the property for public purposes, UP has requested that the abandonment be exempted from the OFA requirements of 49 U.S.C. 10904 and, because it has already sold the property in the City, from the public use requirements of 49 U.S.C. 10905.

Exemptions from 49 U.S.C. 10904-05 have been granted from time to time, provided the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.⁴ Here, UP has transferred the right-of-way to the City for a valid public

⁴ See Doniphan, Kensett and Searcy Railway--Abandonment Exemption--In Searcy, White County, AR, STB Docket No. AB-558X (STB served May 6, 1999); Union Pacific Railroad Company--Abandonment Exemption--In Salt Lake County, UT, STB Docket No. AB-33 (Sub-No. 116X) (STB served Sept. 30, 1998); 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

(continued...)

purpose, and the sole shipper on the line will be relocated and will have access to rail service from UP. Imposition of OFA procedures could delay the City's land use plans and policies and development of the area. Likewise, there is no need for a public use condition because a public use for the right-of-way has already been established between UP and the City.

The evidence of record establishes that the proposed exemptions from 49 U.S.C. 10904-05 meet the criteria of 49 U.S.C. 10502. Applying OFA or public use requirements in this instance is not necessary to carry out the rail transportation policy. Allowing the abandonment exemption to become effective expeditiously, without first being subject to these requirements, would minimize the need for Federal regulatory control over the rail transportation system, expedite the regulatory decision, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. We have already determined that regulation is not necessary to protect shippers from an abuse of market power. Accordingly, we will grant an exemption from the OFA and public use requirements of 49 U.S.C. 10904-05.

We see no need to provide the opportunity for the filing of trail use/rail banking requests. Trail use/rail banking is voluntary and can be implemented only if an abandoning railroad agrees to negotiate an agreement. See section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). Here UP has already transferred the right-of-way to the City.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903-05 the abandonment 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 subject to the conditions that UP shall: (1) refrain from salvaging or disposing of any part of the right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531; (2) consult with the Army Corps prior to salvage of the line to determine if the proposed project is consistent with applicable Federal, state and local water quality standards, and if permits are required under section 404 of the Clean Water Act; and (3) consult with ADEQ prior to any salvage

⁴(...continued)

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).

activity to determine the necessary corrective actions to remediate or remove all soils contaminated as a result of railroad activity along the right-of-way.

2. UP must serve a copy of this decision on Western Emulsions within 5 days of the service date and certify to us that it has done so.

3. This exemption will be effective on March 17, 2000. Petitions to stay must be filed by March 2, 2000, and petitions to reopen must be filed by March 13, 2000.

4. 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 February 16, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a 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, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary