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SERVICE DATE - APRIL 5, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 227X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
CARIBOU COUNTY, ID

Decided: April 4, 2005

By petition filed on December 16, 2004, 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 and discontinue service over UP's Dry Valley Subdivision from milepost 23.90 to milepost 24.11, a distance of 0.21 miles, in Caribou County, ID. Notice of the filing was served and published in the Federal Register on January 5, 2005 (70 FR 938). The exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

The line, constructed in 1965 by UP for El Paso Gas Products Company, was purchased by UP through its subsidiary, the Oregon Short Line Railroad, in 1973. UP states that Astaris, the sole shipper on the line in 2002 and 2003, shipped 1,722 carloads of phosphate rock and 14 empty covered hoppers cars in 2002, and 1,906¹ carloads of phosphate rock in 2003, before selling its mining operations to Agrium. UP also states that there was no traffic on the line from January to September of 2004, but contemplates that Agrium will commence shipping over the line in 2005. There is no overhead traffic on the line. According to UP, the reason for the proposed abandonment is to facilitate the reclassification and sale of the line to Agrium, thereby permitting Agrium to build large size unit trains at its facility with its own personnel. After the

¹ UP's petition for exemption states that 1,609 carloads of phosphate rock were shipped over the line in 2003, while UP's environmental and historic report states that 1,906 carloads of phosphate rock were shipped over the line in 2003. UP's representative orally confirmed that 1,906 carloads of phosphate rock were shipped over the line in 2003, as stated in the environmental and historic report, and that the number stated in the petition for exemption was a typographical error.

abandonment, Agrium will operate the short segment as industrial track, and will continue to receive rail service to its facility from UP. Accordingly, Agrium will not have to use any transportation alternatives.

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, 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 costs of maintaining and operating the line, while preserving service to the sole shipper on the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Agrium, the only shipper on the line, will continue to receive rail service from UP over the reclassified industrial track. Nevertheless, to ensure that Agrium is informed of our action, UP will be required to serve a copy of this decision on Agrium within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment 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 set forth in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

UP has submitted an environmental and historic report 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 report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on February 14, 2005. Comments to the EA were requested by March 15, 2005.

No comments to the EA were filed by the due date. Based on SEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be appropriate for other public use following abandonment under 49 U.S.C. 10905. Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by January 25, 2005. No one has sought a public use condition, and none will be imposed.

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 line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

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

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by April 15, 2005, 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 the filing fee, which currently is set at \$1,200. 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 May 5, 2005. Petitions to stay must be filed by April 20, 2005, and petitions to reopen must be filed by May 2, 2005.

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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 April 5, 2006, 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 no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

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

Vernon A. Williams
Secretary