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SERVICE DATE – LATE RELEASE MAY 7, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 265X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT AND DISCONTINUANCE
OF TRackage RIGHTS EXEMPTION—IN
LOS ANGELES COUNTY, CA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: May 7, 2008

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon the Santa Monica Industrial Lead from milepost 485.61 to milepost 485.69 and to discontinue trackage rights from milepost 485.69 to milepost 486.00, a total distance of 0.39 miles in the City of Los Angeles, Los Angeles County, CA. UP certified that no local or overhead traffic had moved over this 0.39-mile portion of the Santa Monica Industrial Lead for at least 2 years. Notice of the exemption was served and published in the Federal Register on April 8, 2008 (73 FR 19136-37). The exemption was scheduled to become effective on May 8, 2008, provided no formal expression of intent to file an offer of financial assistance (OFA) had been received.¹

On April 16, 2008, James Riffin (Riffin), describing himself as a Class III carrier, filed a notice of intent to file an OFA to purchase the entire 0.39-mile rail line for which UP seeks discontinuance and abandonment authority. On the same date, Riffin filed a petition to toll the date by which an OFA must be filed, arguing that he needed additional time to review the information he has requested from UP pursuant to 49 CFR 1152.27(a). UP filed a reply on April 23, 2008, requesting that the Board reject Riffin's notice of intent to file an OFA and his associated petition to toll. On May 6, 2008, the Los Angeles County Metropolitan Transportation Authority (Metro) filed a reply in opposition to Riffin's pleadings, along with a motion for leave to late-file, which will be granted.

Riffin's notice of intent to file an OFA is fundamentally flawed and will be rejected. First, as to the 0.31-mile segment, which UP does not own and over which UP has trackage rights only, the Board's rules and precedent are clear that OFAs for discontinuance of trackage

¹ By decision served on May 7, 2008, the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to a historic preservation condition.

rights are limited to subsidies to provide continued rail service.² OFAs to purchase a line, like the one that Riffin proposes filing, are not authorized in discontinuance proceedings. Here, as Riffin is not seeking to subsidize UP's operations under the trackage rights, the OFA process is not available to him for the 0.31-mile segment. The notice of intent to file an OFA will therefore be rejected as to this segment.³

Second, Riffin's proposal to purchase the 0.08-mile segment that UP does own will be rejected as well. The OFA process is designed for the purpose of continuing to provide freight rail service. It is well settled that the Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic.⁴ The record in this case demonstrates that there is essentially no possibility of Riffin providing freight rail service over the 0.08-mile segment of the line. There are no active shippers on the segment. The one business located on the segment has not expressed any interest in using rail service, but has instead expressed interest in acquiring the right-of-way to expand its operations. Nor does there appear to be any place along the segment where rail-served customers could locate.

In addition to the lack of potential shippers, UP has presented persuasive evidence that this 0.08-mile segment is incapable of supporting rail service due to its short length. Moreover, there is no likelihood that any shipper would generate any traffic for movement over this

² See, e.g., Delaware and Hudson Railway Company, Inc.—Discontinuance of Trackage Rights Exemption—in Susquehanna County, PA and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie and Genesee Counties, NY, STB Docket No. AB-156 (Sub-No. 25X) (STB served Mar. 30, 2005); CSX Transportation Inc.—Discontinuance Exemption—in Knox County, TN, STB Docket No. AB-55 (Sub-No. 641X) (STB served Jan. 2, 2004); CSX Transportation, Inc.—Discontinuance Exemption—(Between East of Memphis and Cordova) in Shelby County, TN, STB Docket No. AB-55 (Sub-No. 615X) (STB served July 17, 2002).

³ The agreement by which Southern Pacific Transportation Company sold this 0.31-mile segment to Metro's predecessor was examined by the Interstate Commerce Commission (Commission) in Southern Pacific Transp. Co.—Abandonment, 8 I.C.C.2d 495 (1992). In that decision, the Commission exempted Metro's predecessor from the provisions of 49 U.S.C. Subtitle IV as to other segments involved in the sale but not as to this segment. Id. at 512-13. See also Southern Pac. Transp. Co.—Aban.—L.A. County, CA, 9 I.C.C.2d 385 (1993). Consequently, Metro retains a common carrier obligation with respect to the 0.31-mile segment, and it would have to seek Board approval before it could abandon this segment.

⁴ Roaring Fork Railroad Holding Authority—Abandonment Exemption—In Garfield, Eagle, and Pitkin Counties, CO, STB Docket No. AB-547X (STB served May 21, 1999), aff'd sub nom. Kulmer v. STB, 236 F.3d 1255, 1256-58 (10th Cir. 2001); The Land Conservancy of Seattle and King County—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33389, slip op. at 3 (STB served Sept. 26, 1997), aff'd sub nom. Redmond-Issaquah R.R. Preservation Ass'n, 223 F.3d 1057, 1060-63 (9th Cir. 2000).

segment, because, as UP explains, its narrow width (about 30 feet) precludes expansion or the construction of a second track or turnouts that would be necessary to perform switching operations that would be part of moving the traffic of any customer. Because this segment by itself is unsuitable for continued railroad operations, the intended OFA cannot be deemed to be made for the purpose of providing continued rail service; whatever Riffin's motivation for considering the purchase of this rail property,⁵ it is evident that it cannot be to provide rail service over this 0.08-mile segment alone.⁶ Consequently, his notice of intent to file an OFA as to this segment will be rejected. Riffin's related petition to toll the date for filing an OFA will be denied as moot.

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

It is ordered:

1. Riffin's notice of intent to file an OFA is rejected.
2. Riffin's petition to toll the date for filing an OFA is denied as moot.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary

⁵ Questions about Riffin's motives as an OFA offeror have been raised before the Board in the past. See Norfolk Southern Railway Company—Abandonment Exemption—In Norfolk and Virginia Beach, VA, STB Docket No. AB-290 (Sub-No. 293X) (STB served Nov. 6, 2007, Dec. 6, 2007).

⁶ Metro's suggestion in its reply that it will seek authority to abandon the 0.31-mile segment at some future point does not alter our analysis here. The two segments are separately owned, and they will necessarily be addressed in separate proceedings. Moreover, it is not clear when, if at all, Metro would initiate the abandonment process for the 0.31-mile segment.