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SERVICE DATE - AUGUST 26, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-520

SALT LAKE CITY RAILROAD COMPANY, INC.–ADVERSE ABANDONMENT–
LINE OF UTAH TRANSIT AUTHORITY IN SALT LAKE CITY, UT

Decided: August 24, 1999

The Utah Transit Authority (UTA) has filed a petition to waive certain regulations for an adverse abandonment application that it intends to file in which it will ask the Board to find that the public convenience and necessity require and permit the abandonment by the Salt Lake City Southern Railroad Company, Inc. (SLCS) of approximately 25 miles of rail line near Salt Lake City, UT.¹

UTA states that it is filing the adverse application to remove the Board's jurisdiction over SLCS's common carrier operations and obligations. UTA says that it wants to replace SLCS with the Utah Railway Company (URC) as the operator of its line. URC has filed a notice of exemption to acquire and operate the line in Utah Railway Company–Acquisition and Operation Exemption–Lines of Utah Transit Authority in Salt Lake City, UT, STB Finance Docket No. 33785.

UTA, a noncarrier, acquired the underlying right-of-way and track from the Union Pacific Railroad Company. See Utah Transit Authority–Acquisition Exemption–Line of Union Pacific Railroad Company, Finance Docket No. 32186 (ICC served Dec. 31, 1992). UTA is apparently using the line for light rail passenger service. SLCS is operating freight service on the line under a permanent easement. See Salt Lake City Southern Railroad Company, Inc–Acquisition and Operation Exemption–Line Between Mount and Salt Lake City, UT, Finance Docket No. 32276 (ICC served Apr. 23, 1993).

In its waiver petition, UTA contends that much of the information that the Board requires for an abandonment application in the abandonment regulations in 49 CFR 1152 is unavailable or irrelevant to the issues for its adverse abandonment application. As a result, UTA seeks waiver of the regulatory requirements in sections 1152.10, et seq., for a system diagram map; information in section 1152.22(b) about the condition of properties; information in section 1152.22(c) about the service provided; revenue and cost data in section 1152.22(d); and information in section

¹ On August 6, 1999, UTA filed a Corrected Notice of Intent to Seek Adverse Abandonment under procedures of 49 CFR 1152.20 and certified that copies of the notice were served on all persons designated in 49 CFR 1152.20(a)(2), including significant users. UTA's August 6, 1999 notice corrected a notice previously filed on July 30, 1999.

1152.22(e) about rural and community development. UTA also asks for waiver of the environmental and historic reporting requirements in 49 CFR 1105.6(c)(6) and 1105.8(b)(3), noting that rail service will be continued on the line. UTA further states that it intends to submit sufficient relevant information to allow the Board to reach a decision on the merits of its application.

On August 13, 1999, SLCS filed a response to UTA's waiver requests. SLCS opposes the waiver of the requirements in section 1152.22(b) regarding the condition of the line. SLCS states that UTA has recently reconstructed a significant portion of the line to accommodate its light rail operations, so it would be able to provide information about the physical condition of the line. SLCS asserts further that this information would be relevant to determining whether the reconstruction of the line would have a negative impact on freight operations.

SLCS also objects to the waiver of the information in section 1152.22(c) with respect to the freight service provided on the line and revenue and cost data in section 1152.22(d). SLCS acknowledges that UTA would not possess the required information. However, SLCS asserts that UTA should be able to provide information about the present and future services needs of customers on the line and whether the restrictions and limitations it has imposed on freight service are reasonable. SLCS asserts further that UTA should show whether the replacement operator can provide adequate service to shippers.

SLCS acknowledges that UTA would not possess the information in section 1152.22(e) about community and rural development. However, SLCS contends that UTA should provide information about the shipping needs of the freight customers on the line and the alternative transportation services that are available. SLCS asserts that this information is relevant to determining whether evicting it from the line would have an adverse impact on shippers.

Finally, SLCS responds that the environmental and historic reporting requirements do not provide for an exemption for an adverse abandonment proceeding. It notes that UTA claims that these requirements should not be imposed in this proceeding because service will be continued by a new operator. SLCS is concerned that, if the adverse abandonment is approved and UTA does not have authority to select a replacement operator, freight service could be abandoned without anyone having complied with environmental or historic reporting requirements.

On August 20, 1999, UTA filed a reply to SLCS's reply.²

DISCUSSION AND CONCLUSIONS

² UTA filed a petition under 49 CFR 1117.1 for leave to file a reply to SLCS's response to its waiver petition. UTA's petition for leave will be granted and UTA's reply will be accepted in the interest of a more complete record.

In appropriate instances, the Board or its predecessor agency have granted waivers of unneeded portions of the abandonment regulations in adverse proceedings. Chelsea Property Owners–Abandonment–Portion of Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY, Docket No. AB-167 (Sub-No. 1094) (ICC served July 19, 1989); Grand Trunk Western Railroad Incorporated–Adverse Discontinuance of Trackage Rights Application–A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH, Docket No. AB-31 (Sub-No. 30) (STB served Feb. 12, 1998); and City of Rochelle, Illinois–Adverse Discontinuance–Rochelle Railroad Company, STB Finance Docket No. AB-549 (STB served June 5, 1998).

UTA correctly states that some of the cited requirements are not relevant to its adverse abandonment application. SLCS has nonetheless raised valid objections to some of the waiver requests that would preclude granting the waiver requests entirely. For instance, SLCS is correct that UTA can provide information about the physical condition of the line.

In addition, the continued viability of freight service would be a relevant issue in this abandonment proceeding, as UTA's application would evidently be predicated on its assertion that rail service will be continued by another operator. The Board would be concerned if the common carrier obligation for continued freight service would be impeded by light rail passenger service or by any restrictions or limitations UTA has allegedly placed on freight operations. UTA should therefore provide information in its application about how its light rail service affects freight service to shippers.³

UTA's request to waive the environmental regulations is also predicated on the continued freight operation on the line. Even though the proceeding is an abandonment of the line because SLCS holds a permanent easement to operate the line, environmental and historic reporting requirements would indeed be unnecessary for the adverse abandonment application if rail service will be continued by a substitute operator. As it appears that rail service would continue over the line, environmental documentation is not required.

UTA has served notice of its application on shippers served by the line. Shippers can individually submit protests or comments on the proposal that will be considered by the Board in ruling on the merits of the adverse abandonment application.

³ The filings by SLCS and UTA highlight several disputes that have arisen over modifications apparently made to the line to accommodate light rail service. SLCS claims that the modifications have impaired its ability to provide freight service. UTA disputes this assertion. These matters need not be resolved in a decision disposing of the requested waivers as they are matters to be addressed when the merits of the application are considered.

SLCS also disputes UTA's legal authority to select a replacement operator. This and other contractual disputes appear to be beyond the Board's purview.

While these waivers are being granted as discussed in this decision, UTA retains the burden to support its case with relevant evidence.

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

It is ordered:

1. UTA's petition for leave to file a reply to a reply is granted.
2. UTA's petition for waiver is granted to the extent discussed in this decision.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary