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SERVICE DATE - AUGUST 18, 1998

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33626]

Union Pacific Railroad Company and Central Kansas Railway--Joint Relocation Project  
Exemption--in Wichita, Sedgwick County, KS

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate lines of railroad in the City of Wichita, Sedgwick County, KS. UP is a Class I rail carrier and Central Kansas Railway Limited Liability Company (CKR) is a limited liability rail carrier. The proposed transaction was expected to be consummated on or shortly after July 29, 1998, the effective date of the exemption.

The joint relocation project involves: (1) CKR's grant to UP of overhead trackage rights on CKR's line extending from South Junction westward to the line of Kansas Southwestern Railway (KSR): (a) over a portion of CKR's Wichita Subdivision from milepost 0.20 near South Junction to CKR's milepost 3.45 (which connects with KSR's Hardtner Industrial Lead at milepost 487.80) and (b) over CKR's track from milepost 211.49 (which is also milepost 2.80 on CKR's Wichita Subdivision) to milepost 212.44 (which also connects with KSR's Hardtner Industrial Lead at milepost 488.8); and (2) UP's incidental abandonment of, and discontinuance of operations over, a parallel portion of UP's Hutchinson Industrial Lead between milepost 483.44 and milepost 485.94 at Hardtner Junction, a distance of 2.50 miles in Wichita. The trackage rights to be abandoned includes the non-agency station of Hardtner Junction at milepost 485.94.

The proposed joint relocation project will not disrupt service to shippers. The notice states that the project is to remove long freight trains from UP's trackage and to eliminate approximately 24 grade crossings in Wichita. It also states that the project will facilitate implementation of part of an agreement which has been reached between UP, the City of Wichita and Sedgwick County in a signed Memorandum of Understanding (MOU), filed with the Board on June 26, 1998, and granted.<sup>1</sup>

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into a new territory. See City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208 (1993), aff'd sub nom., Detroit/Wayne County Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. See D.T.&I.R.--Trackage Rights, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

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<sup>1</sup> See 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. 80] (STB served July 8, 1998).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33626, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, 1416 Dodge Street, #830, Omaha, NE 68179.

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Decided: August 10, 1998.

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

Vernon A. Williams

Secretary