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SERVICE DATE – NOVEMBER 5, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 3 (Sub-No. 137X)

MISSOURI PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN RED RIVER AND BOWIE COUNTIES, TEX.

Decided: November 4, 2010

By decision served and published in the Federal Register (61 Fed. Reg. 66,748) on December 18, 1996, the Missouri Pacific Railroad Company (MP)¹ was granted an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon a line of railroad extending from milepost 23.0 at New Boston, in Bowie County, Tex., to the end of the track at milepost 61.5 near Clarksville, in Red River County, Tex., a distance of approximately 38.5 miles.² The exemption became effective on January 17, 1997. On December 30, 1996, Rails to Trails Conservancy (RTC) timely filed a request for issuance of a notice of interim trail use (NITU) and submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking pursuant to the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. RTC also acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. On January 3, 1997, UP agreed to the imposition of a trail use condition in this proceeding.

By decision and NITU served on February 14, 1997, a 180-day period was authorized for RTC to negotiate an interim trail use/rail banking agreement with MP for the right-of-way. In a letter filed on July 16, 1997, UP notified the Board that the right-of-way had been conveyed to RTC, effective July 3, 1997.

In a joint motion filed on June 15, 2005, RTC and Bowie County, Tex. (County), requested the substitution of the County as interim trail user for that portion of the right-of-way from milepost 23.0 to milepost 42.59 at the Red River County line, including all bridges and ballast, a distance of approximately 19.59 miles. UP consented to the substitution request and, by decision and NITU served on July 1, 2005, the request was granted. RTC remained the interim trail manager for the portion of the line between milepost 42.59 and milepost 61.5 until

¹ MP merged with and into Union Pacific Railroad Company (UP). In this decision, the abandoning railroad will be referred to as either MP or UP.

² In the same decision, the Board also exempted discontinuance of service on the line. See Tex. Ne. Div., Mid-Mich. R.R.—Discontinuance of Service Exemption—In Red River & Bowie Counties, Tex., AB 364 (Sub-No. 3X).

April 2007, when the cities of Avery, Annona, and Clarksville in Red River County were substituted as interim trail users.³

On April 10, 2007, the County filed a petition to reopen and modify, requesting that the Board vacate a portion of the NITU issued on July 1, 2005. Specifically, the County stated its intention to terminate trail use over a 50-foot wide portion of the railroad right-of-way (measured from the southernmost edge of the right-of-way)⁴ from milepost 23.0 to milepost 42.59 at the Red River County line, including all bridges and ballast, and requested a decision immediately permitting the abandonment of that portion of the right-of-way. Additionally, the County claimed that “the remaining 50 foot portion would permit the future resumption of rail freight service and will continue to be rail banked.”

By decision served May 16, 2007 (May 2007 Decision), the Board stated that:

in order for the Board to grant the relief requested, the County must first demonstrate that, in this particular case, the remaining width of the right-of-way would be sufficient to permit trail use and the reestablishment of rail service.⁵ The present record is insufficient to permit the Board to make that determination. The claim presented by the County regarding future rail service on the line is simply a conclusory statement. Consequently, the County is directed to submit a more detailed discussion as to why the remaining 50 feet of right-of-way will be adequate to accommodate trail use and future rail service.

On July 14, 2010, the County filed a supplemental petition to reopen and modify in which it requests the identical relief sought in its April 10, 2007 filing. In support of the instant request, the County states that “simultaneous rail and trail operations are not anticipated,” that it “has been advised that the minimum required for rail operations is 25 feet,” and that it “understands that there are no prescribed widths for trails.” Petition at 2-3.

³ On March 28, 2007, RTC and the cities of Avery, Annona, and Clarksville filed a joint motion for substitution of the interim trail user on this 18.91-mile corridor. On April 18, 2007, the cities’ motion was granted and a replacement NITU was issued applicable to: (a) Avery as interim trail user for that portion of the right-of-way from milepost 42.59 to approximately milepost 49 (Engineering Station 2587+20); (b) Annona as interim trail user for that portion of the right-of-way from approximately milepost 49 (Engineering Station 2587+20) to approximately milepost 56 (Engineering Station 2956+80); and (c) Clarksville as interim trail user for that portion of the right-of-way from approximately milepost 56 (Engineering Station 2956+80) to milepost 61.5.

⁴ In the instant petition, the County clarifies that it seeks to vacate the northernmost edge of the right-of-way not the southernmost.

⁵ For example, in Union Pacific Railroad—Abandonment—In Harris, Fort Bend, Austin, Wharton & Colorado Counties, Texas, AB 33 (Sub-No. 156) (STB served Dec. 1, 2006) termination of trail use was approved when the trail user indicated that the remaining portion of the right-of-way had been “designed to provide for appropriate curvatures for future restoration of rail service.”

The County's supplemental petition will be denied. Despite being directed in the May 2007 Decision to provide more specifics in support of its request to vacate, the County again offers only a bare, conclusory assertion inadequate to permit the Board to grant the relief sought. While a right-of-way of 50 feet may be adequate for rail operations in some locations, the Board needs to be sure that this rail-banked line could support renewed common carrier service in this location, even though its width has been reduced by half. If it wishes to pursue this matter, the County should submit information sufficient to explain why a 50-foot wide right-of-way would be adequate to support rail operations. This should include, but not be limited to, an explanation of why the 50 feet of width proposed to be eliminated is not necessary for rail operations on this particular right-of-way, and whether there are any bridges, culverts, etc. on the line and, if so, how the utility of those structures would be affected if 50 feet of the right-of-way is eliminated.

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

It is ordered:

1. The County's supplemental petition is denied.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.