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SERVICE DATE - SEPTEMBER 26, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 202X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN FRANKLIN COUNTY, IA

Decided: September 25, 2003

By petition filed on June 10, 2003,¹ 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 approximately 5.90 miles of a line of railroad known as the Sheffield Industrial Lead, extending from milepost 179.80 near Chapin to milepost 173.90 near Sheffield in Franklin County, IA. A request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by the Iowa Trails Council (Iowa Trails) on behalf of the Franklin County Conservation Board (FCB). The petition for exemption will be granted, subject to trail use, public use, environmental, and standard employee protective conditions.

BACKGROUND

UP has served only one shipper on the line proposed for abandonment for the past several years. The shipper, AgVantage FS, Incorporated (AgVantage), operates a grain elevator facility at New Hampton, IA. In the year 2001, AgVantage shipped 171 cars of corn at Sheffield and 539 cars of corn at Chapin. In the year 2002, AgVantage shipped 281 cars of corn and 25 cars of milo at Sheffield and 297 cars of corn at Chapin. AgVantage has already terminated its rail activity at Sheffield in favor of trucking its grain to its recently enlarged, UP rail-served facility at Chapin. That portion of the line at Chapin and running south will be reclassified and AgVantage will take control of the track as an industry spur. UP will continue to provide rail service on its main line in Chapin and will continue to provide service to AgVantage's Chapin facility. According to UP, AgVantage supports the abandonment.

UP states that the area that would be affected by the proposed abandonment is an agricultural area that is already being served by other existing and expanded elevator facilities. UP states that it is unaware of any other industry planning to locate along the line and that current

¹ Notice was served and published in the Federal Register on June 30, 2003 (68 FR 38753).

traffic levels do not justify its continued operation and maintenance. Therefore, according to UP, there are no reasonable alternatives to abandonment of the line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds 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 here. 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 permit UP to enhance its service to the enlarged AgVantage facility at Chapin due to the resulting cost savings to UP, and will improve UP's ability to compete with other rail carriers consistent with 49 U.S.C. 10101(4) and (5). An exemption will also foster sound economic conditions and encourage efficient management by relieving UP from the expense of retaining and maintaining a line that will not generate any traffic and allowing UP to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Nor is regulation of the proposed transaction necessary to protect shippers from the abuse of market power because AgVantage, the sole shipper on the line, supports the abandonment and there are no prospects for future rail traffic. Nevertheless, to ensure that AgVantage is informed of this action, the Board will require UP to serve a copy of the decision and notice on AgVantage within 5 days of the service date and certify to the Board that it has done so. In light of the market power finding, the Board need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its 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, the Board 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 report with its petition 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 abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on August 8, 2003.

In the EA, SEA indicates that the U. S. Army Corps of Engineers, Rock Island District (Corps), has concerns about whether the abandonment activities would involve the removal of any bridges. Therefore, SEA recommends to the Board that the following conditions be placed on any decision granting abandonment authority: if salvage activities include bridge removal, UP shall be required to: (1) remove all fill material to an upland, non-wetland site; (2) remove all pilings to at least one foot below streambed elevations; (3) seed all disturbed areas with native grasses; and (4) take measures to ensure that sediments are not introduced into waterways of the United States.

No comments on the EA were filed by the September 8, 2003 due date. Thus, the conditions recommended by SEA will be imposed. Accordingly, based on SEA's recommendation, the Board concludes that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

On June 10, 2003, Iowa Trails on behalf of FCB filed a request for issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). Iowa Trails on behalf of FCB has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. By letter dated July 18, 2003, UP states that it is willing to negotiate for interim trail use. Because Iowa Trails' request complies with the requirements of 49 CFR 1152.29 and UP is willing to enter into trail use negotiations, the Board will issue a NITU for the subject line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that, if abandonment and salvage of the line does take place, the right-of-way may be suitable for other public use. Iowa Trails requests imposition of a 180-day public use condition to preserve the right-of-way for possible reactivation of rail service and to provide sufficient time to negotiate for the acquisition of the right-of-way for use as a trail in the interim. Iowa Trails also requests that UP be prohibited from removing bridges, trestles, culverts, ballast and other trail-related items.

The agency has determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. Iowa Trails has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested.

Accordingly, a 180-day public use condition will be imposed on the line to be abandoned, commencing from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. A public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with Iowa Trails, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts 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), and subject to the conditions that UP (1) shall leave intact all of the right-of-way, including bridges, trestles, culverts, ballast and other trail-related items for a period of 180 days from the effective date of this decision and notice, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; (2) comply with the terms and conditions for implementing interim trail use/rail banking as set forth below; and (3), if salvage activities include bridge removal, shall be required to: (a) remove all fill material to an upland, non-wetland site; (b) remove all pilings to at least one foot below streambed elevations; (c) seed all disturbed areas with native grasses; and (d) take measures to ensure that sediments are not introduced into waterways of the United States.

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

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it

need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by October 6, 2003, 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 \$1,100. See 49 CFR 1002.2(f)(25).

8. 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."**

9. Provided no OFA has been received, this exemption will be effective October 26, 2003. Petitions to stay must be filed by October 14, 2003, and petitions to reopen must be filed by October 21, 2003.

10. 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 September 26, 2004, 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.

Vernon A. Williams
Secretary