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SERVICE DATE – MAY 16, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 259X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN LOS ANGELES COUNTY, CA

Decided: May 15, 2008

By petition filed on January 28, 2008, 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 its easement over 0.3 miles of rail line on the Lakewood Industrial Lead between mileposts 16.2, at Carson Street, and milepost 16.5, near Cover Street, in Lakewood, Los Angeles County, CA (the line). Notice of the filing was served and published in the Federal Register on February 15, 2008 (73 FR 8929). The petition for exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

According to UP, the line was once part of a through route between Los Angeles and San Pedro, CA. The line was sold by UP to Ganahl Lumber Company (Ganahl), the sole shipper using the line, on August 11, 2006, to allow Ganahl to develop and expand its transload facility. At the time of sale, UP retained an operating easement over the line allowing it to serve any potential customers on the line in compliance with its common carrier obligation. However, because Ganahl owns all of the property traversed by the line, UP asserts that there is no reasonable possibility that the line will generate any new business, other than business utilizing Ganahl's transload facility. UP will continue to serve Ganahl following the proposed abandonment of its easement from an adjoining section of its Lakewood Industrial Lead. According to UP, Ganahl will use the line as industrial track following the proposed abandonment. No filings have been made in opposition to UP's petition.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior approval from the Board. Under 49 U.S.C. 10502, however, the Board must exempt a proposed abandonment from regulation under 49 U.S.C. 10903 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 of this transaction under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment application, an exemption will expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. 10101 (2) and (7)]. An exemption will also foster sound economic conditions by relieving UP from the cost of maintaining this line, and, as a result, removing impediments to Ganahl's day-to-day business activities [49 U.S.C. 10101(5)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. Ganahl, the only shipper on the line, will have alternative transportation available to it. Nevertheless, to ensure that Ganahl is aware of the proposed abandonment, UP will be required to serve a copy of this decision on Ganahl within 5 days of the service date of this decision and to certify to the Board that it has done so. Given the market power finding here, the Board need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board's exemption authority may not be used to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

As required by the Board's environmental regulations, UP submitted environmental and historic reports with its petition and notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the potential environmental impacts of the proposed action. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental and historic reports, verified UP's data, analyzed the probable effects of the proposed action on the quality of the human environment, and issued an Environmental Assessment (EA) for public review and comment. The EA was served on March 28, 2008. Comments to the EA were due by April 28, 2008. No comments to the EA were filed.

In the EA, SEA recommends that no environmental conditions be placed on any decision granting abandonment authority. Accordingly, no environmental condition will be imposed.

We conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or conservation of energy resources.

Although SEA has indicated that, following the line's abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.¹

¹ Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by March 6, 2008.

It is ordered:

1. Under 49 U.S.C. 10502, UP is exempt from the prior approval requirements of 49 U.S.C. 10903 for the abandonment of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co—Abandonment—Goshen, 360 I.C.C. 91 (1979).
2. UP is directed to serve a copy of this decision on Ganahl by May 21, 2008, and to certify to the Board that it has done so.
3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by May 23, 2008, 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 of \$1,300. See 49 CFR 1002.2(f)(25).
4. 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.”**
5. Provided no OFA has been received, this exemption will be effective on June 15, 2008. Petitions to stay must be filed by June 2, 2008, and petitions to reopen must be filed by June 10, 2008.
6. 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 May 16, 2009, 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 Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary