

Law Department

UNION PACIFIC RAILROAD COMPANY

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ENTERED
Office of Proceedings



FEB 03 2003

Part of
Public Record

February 4, 2003



Via UPS Next Day Air

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

207157

Re: Docket No. AB-364 (Sub-No. 7X) The Texas Northeastern Division, Mid-Michigan Railroad, Inc. – Discontinuance of Service Exemption – In Grayson County, TX (Denison to Sherman)

Dear Mr. Williams:

This refers to Notice of Exemption served by the Board on January 29, 2003 in the above proceeding. The line which is the subject of this notice extends between Denison (Sherman Jct.) and Sherman, TX. The line had been previously abandoned pursuant to Docket No. AB-102 (Sub-No. 21X) Missouri – Kansas – Texas R. Co – Abandonment – In Grayson County TX. A notice of exemption covering this abandonment was granted in the ICC decision approving the UP/MKT merger, 4 I.C.C. 2d 409, 488-89 (1988). Following the abandonment, the line was leased to TNER. According to the Environmental Report filed by TNER in the above proceeding, TNER never resumed rail operations over the line, opting instead to acquire trackage rights over a parallel BNSF line.

Footnote No. 1 of the January 29 Notice concludes that UP, as the owner of the above line, retains a common carrier obligation, essentially because the 1988 MKT abandonment of the line was supposedly never consummated. Since UP was not a party to the instant proceeding, it was inappropriate for the Board to purport to determine UP's obligations in the Notice. Further, as we will show below, the Board's conclusion as to UP's common carrier status is erroneous:

1. The MKT abandonment was, in fact, fully consummated over 13 years ago, and a "notice of abandonment" dated December 7, 1989 was filed with the Board (Attachment 1 hereto). Based on our surviving files, it appears that no question was raised by the ICC or by anyone else at the time or afterwards as to whether the line had been properly abandoned.
2. The January 29 Notice questions whether the line was fully abandoned because an exemption was later obtained for a lease of the line in Finance Docket No. 31646, Mid Michigan R. Co. – Lease and Operation Exemption – Missouri Pacific R. Co., (served August 28, 1990). This exemption actually covered several lines (the "Bonham Package"), most of which had not been abandoned. Contrary to the January 29 Notice, the FD 31946 transaction does not demonstrate that the

Denison-Sherman line was unabandoned. To the contrary, the Petition for Exemption in FD 31946 expressly recognized the line's abandoned status, stating as follows:

"The line between milepost 662.54 and 673.05 is abandoned trackage. As to that segment, this Petition relates only to MN's operation over the line, and not to its acquisition." Petition, p. 3 fn 2 (Attachment 2 hereto)

3. The January 29 notice suggests that the 1988 MKT abandonment could not have been consummated because a historic preservation condition imposed in the 1988 abandonment proceeding remains outstanding. First of all, it is now over 14 years since this abandonment was approved, and 13 years since it was consummated. There is no one currently employed by UP who was actively involved in the 1988 abandonment proceeding, and some of the files no longer exist. As such, it is no longer possible to determine exactly what was or was not done in connection with the historic condition. However, based on our surviving files, it appears that no one has ever previously raised any question as to compliance with the historic condition.

Further, the historic condition did not relate to anything on the abandonment line and, as such, did not stand in the way of abandonment consummation. The condition in question required MKT to comply with Section 106 "with respect to the Ray and Downtown Yards in Denison", 4 I.C.C.2d at 578. But neither of these yards were on, along or accessed from the abandonment line. Attachment 3 hereto is a map showing the location of the Denison-Sherman abandonment line, and the Ray and Downtown Yards in the Denison area. As can be seen, both yards were roughly 2 miles away from the line. Given the location of these yards, it is unclear why such a historic condition was even imposed on this abandonment. The only potentially "historic" property identified in MKT filings for the Denison-Sherman line was a bridge at milepost P-665.2. As far as we can determine from our surviving files, there was no request by the Texas SHPO or anyone else that a historic condition covering the two yards be imposed on this abandonment. And there was no claim by the Texas SHPO or anyone else that either yard would be affected by this abandonment. There were claims that other aspects of the merger transaction could affect some of these properties, but not the Denison-Sherman abandonment. The most probable explanation for the condition at this late date appears to be that the MKT milepost designations in the area were confusing, and could have led to a locational error.

For the reasons stated above, UP respectfully requests that the Board issue a corrected notice of exemption in the above proceeding which either concludes that UP has no common carrier obligation as to the line or which deletes footnote 1 in its entirety.

An additional ten (10) copies of this letter are enclosed for the Board's files.

Very truly yours,



Robert T. Opal
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Att.

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET
OMAHA, NEBRASKA 68119

December 7, 1989

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Abandoned Rail Lines

Dear Ms. McGee:

This is notification of rail lines abandoned in various dockets below. The abandonments are related to the control proceeding of Missouri-Kansas-Texas Railroad Company, Finance Docket No. 30800.

AB-102 (Sub-No. 16)
Missouri-Kansas-Texas Railroad Company --
Abandonment -- In Pettis and Henry Counties, MO.
Certificate and Decision served July 11, 1988.
Abandoned from MP 229.0 near Sedalia to MP 262.6 near
North Clinton on November 1, 1989.

AB-102 (Sub-No. 17)
Missouri-Kansas-Texas Railroad Company --
Abandonment -- In Bourbon, Crawford, Neosho and Labette
Counties, KS.
Certificate and Decision served July 8, 1988.
Abandoned from MP 340.5 near Griffith to MP 383.8 near
Parsons on November 1, 1989.

AB-102 (Sub-No. 18X)
Missouri-Kansas-Texas Railroad Company -- Abandonment
Exemption -- In Comal County, TX.
Notice of Exemption served May 19, 1988 (F.D. 30800).
Abandoned from MP M-995.9 near Hunter to MP M-1012.6
near Ogden on November 1, 1989.

AB-102 (Sub-No. 21X)

Missouri-Kansas-Texas Railroad Company -- Abandonment
Exemption -- In Grayson County, TX.

Notice of Exemption served May 19, 1988 (F.D. 30800).
Abandoned from MP P-662.54 at Denison to MP P-673.05 at
Sherman on November 1, 1989.

AB-102 (Sub-No. 22X)

Missouri-Kansas-Texas Railroad Company -- Abandonment
Exemption -- In Grayson County, TX.

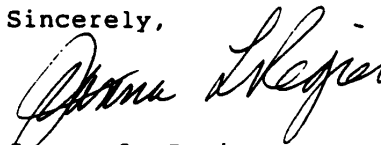
Notice of Exemption served May 19, 1988 (F.D. 30800).
Abandoned from MP D-659.5 at Denison to MP D-674.3 near
Bells on November 1, 1989.

AB-3 (Sub-No. 62)

Missouri Pacific Railroad Company -- Abandonment -- In
Butler County, KS.

Certificate served May 19, 1988 (F.D. 30800)
Abandoned from MP 454.7 near ElDorado to MP 474.4 near
Whitewater on November 29, 1989.

Sincerely,



Jeanna L. Regier
Registered ICC Practitioner

ATTACHMENT 2

BEFORE THE
INTERSTATE COMMERCE COMMISSION

In The Matter Of:	)	
	)	
MID MICHIGAN RAILROAD	)	Finance Docket No. 31646
COMPANY, INC. -- LEASE	)	
EXEMPTION -- MISSOURI	)	
PACIFIC RAILROAD LINES	)	
IN NORTH TEXAS	)	

VERIFIED PETITION
FOR EXEMPTION

Pursuant to 49 U.S.C. §10505, Mid Michigan Railroad Company, Inc. ("MM") and Missouri Pacific Railroad Company ("MP") file this Verified Petition for Exemption from the application of 49 U.S.C. §11343, et seq. to MM's lease and operation of approximately 200.53 miles of rail and rail-related property in North Texas (hereinafter referred to as the "Bonham Package"). The subject property is owned and currently operated by MP. As will be shown, this case presents a proper subject for the expeditious exercise of the Commission's authority under 49 U.S.C. §10505.

In support of this Petition, MM and MP show as follows:

IDENTITY OF PETITIONERS

MM is a Class III common carrier by rail that was organized in 1987. A Michigan corporation, MM is a wholly-owned

If the instant Petition is granted, MM will operate the Bonham Package under common management as a separate division of MM. The tracks of MM do not presently connect with the Bonham Package, or with the lines of any other railroad in the RailTex family, and the transaction that is the subject of this Petition is not part of a plan to bring about such a connection.

The proposed transaction is scheduled to be consummated immediately upon the effectiveness of the exemption herein sought.

BACKGROUND

A. The Bonham Package

The main portion of the rail property that is the subject of this Petition runs between milepost .57 at Texarkana and Whitesboro, Texas, a distance of 172.53 miles. Also included are certain shorter branch lines, as follows: (1) from milepost 658.14 at Denison, Texas to milepost 660.85 at McCune Junction, and beyond over ICC Track Numbers 357,17,18 and 27 to the Burlington Northern Railroad connection near Johnston Street in Denison; (2) from milepost 674.3 at Bells, Texas to milepost 688.1 at Trenton, Texas; and (3) from milepost 662.52 at Denison to milepost 673.6 at Sherman, Texas.² In total, approximately 200 miles of line is subject to the proposed lease. The Bonham

² The line, between milepost 662.54 and 673.05 is abandoned trackage. As to that segment, this Petition relates only to MM's operation over the line, and not to its acquisition.

