

SERVICE DATE - FEBRUARY 25, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 103X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN SARPY COUNTY, NE
(GILMORE INDUSTRIAL LEAD)

Decided: February 13, 1997

By petition filed September 20, 1996, 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 service over a portion of its rail line known as the Gilmore Industrial Lead extending from milepost 11.76 to the end of the line at milepost 12.23, near Gilmore, a distance of 0.47-mile in Sarpy County, NE. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

UP's Gilmore Industrial Lead extends approximately 1.3 miles between Gilmore Junction and Gilmore, in Sarpy County, NE. The abandonment involves the non-agency station of Gilmore at the end of the line at milepost 12.23. The line is constructed of 90-pound and 100-pound rail and is operated at 10 mph. The line is classified as excepted track. There is no overhead traffic and local service is provided on an as-needed basis.

DPC Industries (DPC), which receives rail shipments of chemicals, is the only shipper served by the line. DPC is located at the end of the line. According to UP, the availability of rail service will not be affected by the abandonment because, after abandonment, UP will convey the track structure to DPC, and DPC will use the trackage for loading and unloading purposes.¹

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find 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 time and expense of abandonment, an exemption will expedite regulatory decisions and reduce

¹ UP states that DPC owns the right-of-way underlying the track structure, over which petitioner has an easement for operations.

regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption will also promote a safe and efficient rail transportation system, foster sound economic conditions, and encourage efficient management because UP will be able to reallocate the funds and materials needed to maintain and operate the line elsewhere on its rail system [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power as the sole active shipper on the line will be able to continue to use the rail line after the abandonment and thus does not object to the abandonment. Nevertheless, to ensure that DPC is informed of our decision, we will require UP to serve a copy of this decision on that shipper within 5 days of its service date, and to certify to the Board that service has been effected. Given our market power finding, we need not determine whether the proposed transaction is limited in scope, although the proposed abandonment appears to satisfy that criterion as well.

UTU requests the imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect employee interests. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions 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 impact of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effect of the proposed action on the quality of the human environment. In an environmental assessment (EA) served on December 9, 1996, SEA recommended that no environmental conditions be imposed here. It also found that the right-of-way may not be suitable for other public use because, after abandonment, the track structure will be conveyed to DPC for the shipper's use for loading and unloading purposes. No comments to the EA were filed by the January 6, 1997 due date and no objections have been raised to SEA's conclusions. Accordingly, no environmental conditions will be imposed here. We also conclude that, based on SEA's recommendation, the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

On October 15, 1996, Papio-Missouri River Natural Resources District (District) filed requests for trail use and public use conditions in this case. On October 23, 1996, UP advised that it would not agree to the trail use request. In light of the railroad's response and UP's stated intention to convey the track structure to shipper DPC for rail use, we will deny the District's trail use request and not provide for any future trail use filings. Moreover, because DPC owns the right-of-way here, we will also deny the District's request for a public use condition. Also, for that reason, we will not make routine

provisions for interested parties to file future public use requests. We will, however, provide for offers of financial assistance (OFA).

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 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. Notice will be published in the Federal Register on February 25, 1997.

3. Union Pacific Railroad Company must serve a copy of this decision on DPC Industries within 5 days after the service date of this decision and certify to the Board that it has done so.

4. This exemption will be effective on March 27, 1997 unless stayed or a formal expression of intent to file an OFA is filed.

5. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)² must be filed by March 7, 1997; petitions to stay must be filed by March 12, 1997; and petitions to reopen must be filed by March 24, 1997.

6. If a formal expression of intent to file an OFA has been timely submitted, an OFA to allow rail service to continue must be received by the railroad and the Board within 30 days after publication, subject to time extensions authorized under 49 CFR 1152.27(c)(2)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2).

7. 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."**

By the Board, Chairman Morgan and Vice Chairman Owen.

² See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), for regulations in effect at the time of filing of the exemption petition. We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued final rules in Abandonment and Discontinuance of Rail Lines and Rail Transportation under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996), that became effective on January 23, 1997. Because we have processed the exemption petition under the former regulations, we will continue to use the former regulations in this proceeding to process an OFA, if one is filed.

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Vernon A. Williams
Secretary