

SERVICE DATE – DECEMBER 28, 2020

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 346X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN KOOTENAI COUNTY, IDAHO

Digest:¹ This decision permits the abandonment of a 1.16-mile rail line in Coeur d’Alene, Kootenai County, Idaho, subject to trail use and standard employee protective conditions.

Decided: December 23, 2020

On September 18, 2020, Union Pacific Railroad Company (UP), a Class I rail carrier, filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon an approximately 1.16-mile portion of the Coeur d’Alene Industrial Lead, between milepost 1.09 and milepost 2.25, in Coeur d’Alene, Kootenai County, Idaho (the Line). Notice of the petition was served and published in the Federal Register on October 8, 2020 (85 Fed. Reg. 63,637). As discussed below, the Board will grant the exemption, subject to trail use and standard employee protective conditions.

BACKGROUND

According to UP, the Line was constructed by the Coeur d’Alene & Pend d’Oreille Railway in the early 1900s and subsequently operated by the Spokane International Railroad, which was acquired by UP in the 1950s. (Pet. 3.) UP states that the Line connects to UP’s Spokane Subdivision and is currently used to serve one shipper, AmeriGas Propane (AmeriGas), which has reached an agreement with the Idaho Transportation Department (ITD) to relocate its facility off of the Line. (Id. at 2-3.) UP’s adjacent track to the south of the Line was the subject of a previous abandonment proceeding and interim trail use has been established under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). See UP Letter 1, Feb. 20, 2007, Union Pac. R.R.—Aban. Exemption—in Kootenai Cnty., Idaho, AB 33 (Sub-No. 218X) (notifying agency that the line had been conveyed pursuant to the Trails Act). UP states that it intends to “sell the track and property to the State of Idaho through [ITD]” for use as a trail subject to the Trails Act, a project that would also facilitate a highway expansion project. (Pet. 2.)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

The Board received letters in support of UP's petition for abandonment from the City of Post Falls, ITD, the Post Falls Highway District, the City of Coeur d'Alene's Streets & Engineering Department and Parks Department, and the Kootenai Metropolitan Planning Organization.

On October 20, 2020, ITD submitted a request for issuance of a notice of interim trail use or abandonment (NITU) pursuant to the Trails Act and 49 C.F.R. § 1152.29. On October 30, 2020, UP filed a letter stating that it agrees to negotiate for interim trail use with ITD.

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. Pursuant to 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 (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

In this case, detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP. An exemption would minimize the need for federal regulatory control over the rail transportation system, foster sound economic conditions in transportation, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of the proceeding. 49 U.S.C. § 10101(2), (5), (7), (15). Other aspects of the RTP would not be adversely affected by use of the exemption process.

Similarly, regulation of the proposed abandonment under 49 U.S.C. § 10903 is not needed to protect shippers from the abuse of market power.² As discussed above, the sole shipper on the Line, AmeriGas, has reached an agreement with ITD to relocate its facility off of the Line. (Pet. 2.)

Employee Protection. 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 upon UP the employee protections set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Environmental and Historic Review. UP submitted a combined environmental and historic report with its petition and has notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. §§ 1105.7, 1105.8, 1105.11. The Board's Office of Environmental

² Because regulation of the proposed abandonment is not needed to protect shippers from the abuse of market power, the Board need not determine whether the proposed transaction is limited in scope. 49 U.S.C. § 10502(a)(2).

Analysis (OEA) has examined the report, verified the data it contains, and analyzed the potential effects of the proposed action on the quality of the human environment.

In a Draft Environmental Assessment (Draft EA) served on November 17, 2020, OEA concluded that, as proposed, the abandonment of the Line would not significantly affect the quality of the human environment. Comments on the Draft EA were due by December 15, 2020. No comments were received. OEA served a Final EA on December 22, 2020, recommending no environmental or historic preservation conditions. Based on OEA's assessment, the Board agrees that this action will not significantly impact the quality of the human environment or the conservation of energy resources. Therefore, the Board will not impose environmental or historic preservation conditions.

Offers of Financial Assistance. The Board will not consider offers of financial assistance (OFA) in this case because no formal expressions of intent to file an OFA were filed by the October 18, 2020 deadline. See 49 C.F.R. § 1152.27(c)(1)(i).

Interim Trail Use. As indicated above, ITD filed a request for issuance of a NITU for the Line's right-of-way. ITD's request includes a statement of willingness to assume full responsibility for the management of the right-of-way, for any legal liability arising out of the transfer or use of the right-of-way, and for the payment of any and all taxes that may be levied or assessed against the right-of-way, as required by 49 C.F.R. § 1152.29. ITD has also provided a map and acknowledged that its use of the right-of-way for trail purposes is subject to its continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. UP has agreed to negotiate for interim trail use/rail banking with ITD.

Because ITD's request complies with the requirements of 49 C.F.R. § 1152.29 and UP agrees to negotiate for trail use/rail banking, the Board will issue a NITU for the Line.³ The parties may negotiate an interim trail use/rail banking agreement during the one-year period prescribed below. If an interim trail use/rail banking agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) & (h). If no agreement is reached within one year, UP may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1)(i). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way.

³ In addition to their intent to pursue trail use on the right-of-way, UP and ITD have stated the abandonment would facilitate a highway expansion project by eliminating several at-grade public rail crossings. (See Pet. 2; ITD Letter 1; ITD NITU Req. 1-2.) In fulfilling its role under the Trails Act, the Board does not authorize any use of a rail line that would not be consistent with interim trail use and railbanking.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 UP's abandonment of the Line, subject to the employee protective conditions set forth in Oregon Short Line.

2. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

3. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 2, above.

4. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2), (h).

5. If interim trail use/rail banking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/rail banking agreement, 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 December 28, 2021, interim trail use/rail banking may be implemented. If no agreement is reached, the Line may be fully abandoned, subject to any outstanding conditions.

7. The exemption will be effective on January 27, 2021. Petitions for stay and petitions to reopen are due by January 12, 2021.

8. Pursuant to 49 C.F.R. § 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 December 28, 2021, 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 one-year period, the notice of consummation must be filed no later than 60 days after the satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Board Members Begeman, Fuchs, and Oberman.