

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 201X)

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

Decided: September 12, 2003

By petition filed on May 27, 2003, 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 a 7.84-mile line of railroad, in the western portion of the Bristow Subdivision, extending from milepost 318.66, near Hampton, to milepost 326.50, near Coulter, in Franklin County, IA (the line).¹ Notice of the petition was served and published in the Federal Register (68 FR 35775) on June 16, 2003. 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 (Council), on behalf of the Franklin County Conservation Board (Conservation Board). The exemption will be granted, subject to trail use, public use, environmental, and standard employee protective conditions.

BACKGROUND

According to UP, AgVantage FS, Incorporated (AgVantage), the only customer on the line over the past 2 years, has recently terminated its rail use on the line.² UP states that AgVantage now trucks grain to its recently enlarged facility on the UP at Chapin, IA, and that it will continue to provide service to AgVantage at both Chapin and Hampton, IA. UP also states that AgVantage has been informed of this petition and that AgVantage supports the abandonment. Finally, UP states that it is not aware of any new industry planning to locate on the line and that there is no overhead traffic.

¹ UP has also sought an exemption to abandon the eastern portion of the Bristow Subdivision in pending STB Docket No. AB-33 (Sub-No. 200X). Notice of the petition in that proceeding was served and published in the Federal Register (68 FR 38421) on June 27, 2003.

² AgVantage shipped or received 771 carloads of grain and fertilizer in 2001 and 956 carloads in 2002.

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. By minimizing the administrative expense of the abandonment application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving UP of the costs of owning and maintaining a line that is no longer used. [49 U.S.C. 10101(5) and (9)]. 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 because there are no active shippers on the line. The line's only recent shipper, AgVantage, will continue to receive rail service from UP and reportedly supports the abandonment. Nevertheless, to ensure that the shipper is informed of the Board's action, UP will be required to serve a copy of this decision on AgVantage within 5 days of the service date of this decision and certify to the Board that it has done so. Given the market power finding, the Board need not determine whether the proposed transaction 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 action. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on July 25, 2003.

In the EA, SEA notes that the National Geodetic Survey (NGS) has identified five geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring UP to provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy the markers so that plans can be made for their relocation. Also, at the time the EA was served, the State Historical Society of Iowa (the State Historic Preservation Officer or SHPO) had not completed its

assessment of the potential impact of this action on historic resources. However, subsequently, the SHPO informed SEA that the proposed abandonment would have no effect on historic properties.

SEA states that the Natural Resources Conservation Service (NRCS) has submitted comments regarding what effect, if any, the proposed abandonment would have on water conveyance systems and consequently on prime agricultural lands. Therefore, SEA recommends that, prior to conducting salvage activities, UP be required to consult with NRCS to identify such systems in the area of the proposed abandonment to determine if they would be adversely affected by salvage activities and, if so, how such harm can be mitigated.

SEA also states that the U.S. Army Corps of Engineers (Corps) has enumerated required mitigation steps to be taken if any salvage activities involve the extraction of any bridges. Therefore, SEA recommends that, if salvage activities include bridge removal, UP be required to remove all fill material to an upland, non-wetland site, remove all pilings to at least 1 foot below streambed elevations, seed all disturbed areas with native grasses, and take measures to ensure that sediments are not introduced into waters of the United States.

Other than the remarks of the SHPO discussed above, no comments to the EA were filed by the August 22, 2003 due date. Accordingly, the conditions recommended by SEA in the EA will be imposed. The proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As indicated, on July 1, 2003, the Council, on behalf of the Conservation Board, timely filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and a request for public use under 49 U.S.C. 10905. The Council and the Conservation Board submitted a statement of willingness to assume financial responsibility for the management of, for 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 payment of any and all taxes that may be levied or assessed against, the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service, as required at 49 CFR 1152.29. UP has indicated that it is willing to negotiate with the Council for interim trail use. Because the request complies with the requirements of 49 CFR 1152.29, and UP is willing to enter into negotiations, a NITU will be issued as requested. 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 the EA that, if abandonment and salvage of the line does take place, the right-of-way may be suitable for other public use. The Council, on behalf of the

Conservation Board, requests imposition of a 180-day public use condition to commence negotiations with UP. Specifically, the Council and the Conservation Board request that UP be precluded from: (1) disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts, and ballast.

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 has been established, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. The Council and the Conservation Board have 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 rail 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 a 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 the Council and the Conservation Board, 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, an exemption from the prior approval requirements of 49 U.S.C. 10903 for the abandonment by UP of the above-described line is granted, 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 shall: (1) leave intact all of the right-of-way, including bridges, trestles, culverts, and ballast (but not track and track material), for a period of 180 days from the effective date of this decision, to enable any state or local

government agency or 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; (3) provide NGS with at least 90 days' notice prior to initiation of any salvage activities that may disturb or destroy any geodetic station markers so that plans can be made for their relocation; (4) consult with NRCS to identify water conveyance systems in the area of the proposed abandonment to determine if they would be adversely affected by salvage operations and, if so, how such harm can be mitigated; and (5) comply with Corps' requirements if salvage activities include bridge removal, by removing all fill material to an upland, non-wetland site, by removing all pilings to at least 1 foot below streambed elevations, by seeding all disturbed areas with native grasses, and by taking measures to ensure that sediments are not introduced into waters of the United States.

2. UP is directed to serve a copy of this decision and notice on AgVantage 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 September 22, 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 1157.27(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 on October 12, 2003. Petitions to stay must be filed by September 29, 2003, and petitions to reopen must be filed by October 7, 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 12, 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