



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 307X)]

Union Pacific Railroad Company—Abandonment Exemption—in Adams, Weld and Boulder Counties, Colo.

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon a 23.90-mile freight rail operating easement for the remaining portion of the Boulder Industrial Lead, extending from milepost 9.27 near Eastlake to the end of the line at milepost 33.17 near Valmont, in Adams, Weld and Boulder Counties, Colo. The line traverses United States Postal Service Zip Codes 80241, 80602, 80603, 80516, 80514, 80026 and 80301.

UP originally filed its notice of exemption on June 27, 2012. In a decision served on July 26, 2012, at UP's request, the Board held in abeyance the publication of the notice in the Federal Register and the effectiveness of the abandonment exemption, pending further Board action on a subsequent petition filed by UP seeking exemptions from 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions) for the proposed abandonment.

In a decision served on October 18, 2012, in this docket, the Board granted UP's petition and exempted the proposed abandonment from the provisions of 10904 and

10905.¹ That decision also provided for Federal Register publication of this notice on October 23, 2012, the date from which any remaining deadlines will be calculated.

According to UP, the entire Boulder Industrial Lead, including the 23.90-mile right-of-way over which UP is seeking to abandon its freight operating easement, along with the Lead's trackage, structures, and bridges, was sold to the Denver Regional Transportation District (RTD) in June 2009.² UP states that the line has been incorporated into the master plan for RTD's integrated mass transit system known as FasTracks (a regional public passenger rail and bus network for the greater Denver, Colo. area). UP also states that it had retained a common carrier freight operating easement over the entire Lead, and that RTD assumed no common carrier obligation with regard to the line through its purchase of the line. UP points out that, on or prior to consummation of the proposed abandonment, UP will assign to RTD its interest as lessor under a lease with the BNSF Railway Company that was last amended in 1999 that also includes a

¹ In the October 18, 2012 decision, the Board stated that there would not be an opportunity for interested persons to file trail use/rail banking requests. Under Section 8(d) of the National Trail Systems Act, 16 U.S.C. 1247(d), trail use/rail banking is voluntary and can only be implemented if an abandoning railroad agrees to negotiate an agreement. UP stated that it was not willing to negotiate for trail use/rail banking because the right-of-way that makes up the subject portion of the Boulder Lead had already been sold and incorporated into the RTD mass transit system. Therefore, no such requests will be entertained by the Board in this proceeding.

² UP notes that, in a decision served on October 19, 2001, UP was authorized to discontinue service over a portion of the Boulder Industrial Lead extending from milepost 18.79 to milepost 31.0 that allowed the Colorado Department of Transportation (CDOT) to widen Interstate Highway 25 by removing, rather than rebuilding or enlarging, the existing railroad bridge that ran over Interstate Highway 25. UP states that it had an agreement with CDOT providing that, if service were to resume over this segment, UP had the right to rebuild a new bridge over Interstate Highway 25 and would pay for it.

portion of the Lead extending from milepost 32.0 to milepost 33.0 and a related industrial spur. RTD will remain the owner of the entire Lead after consummation of the proposed abandonment by UP.

UP has certified that: (1) no local traffic has moved over the line for at least two years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

This exemption will be effective on November 22, 2012, unless stayed pending reconsideration. Petitions to stay must be filed by November 2, 2012, and petitions to reopen must be filed by November 13, 2012, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void ab initio.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on July 20, 2012, requesting comments by August 6, 2012. In the EA, OEA recommended that the Board not impose environmental conditions on any decision granting abandonment authority. No comments to the EA were filed by the August 6, 2012 due date. Therefore, no conditions will be imposed. Because no environmental or historic preservation issues have been raised by any party or identified by OEA, a Finding of No Significant Impact under 49 CFR 1105.10(g) is made pursuant to 49 CFR 1011.7(a)(2)(ix).

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 October 23, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 18, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner

Clearance Clerk

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