

30429
DO

SERVICE DATE - AUGUST 4, 1999

SURFACE TRANSPORTATION BOARD

DECISION¹

Docket No. AB-3 (Sub-No. 133X)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IOWA JUNCTION LINE-MANCHESTER LINE IN JEFFERSON DAVIS AND
CALCASIEU PARISHES, LA

Docket No. AB-12 (Sub-No. 184X)

SOUTHERN PACIFIC TRANSPORTATION COMPANY--ABANDONMENT
EXEMPTION--WENDEL-ALTURAS LINE IN MODOC AND LASSEN
COUNTIES, CA

Docket No. AB-12 (Sub-No. 187X)

SOUTHERN PACIFIC TRANSPORTATION COMPANY--ABANDONMENT
EXEMPTION--SEABROOK-SAN LEON LINE IN GALVESTON
AND HARRIS COUNTIES, TX

Docket No. AB-33 (Sub-No. 93X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
WHITTIER JUNCTION-COLIMA JUNCTION LINE
IN LOS ANGELES COUNTY, CA

Docket No. AB-33 (Sub-No. 96)

¹ These proceedings are related to Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (UP/SP). The common control authorized in UP/SP, Decision No. 44 (STB served Aug. 12, 1996) was consummated on September 11, 1996. Missouri Pacific Railroad Company (MPRR) was merged into Union Pacific Railroad Company (UPRR) on January 1, 1997; Southern Pacific Transportation Company (SPT) merged into UPRR on February 1, 1998. The acronym "UP" has reference to the combined UP/SP rail system.

Docket No. AB-3 (Sub-No. 133X), et al.

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT--BARR-GIRARD
LINE IN MENARD, SANGAMON AND MACOUPIN COUNTIES, IL

Docket No. AB-33 (Sub-No. 97X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN DECAMP-EDWARDSVILLE LINE IN MADISON COUNTY, IL

Docket No. AB-33 (Sub-No. 98X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
EDWARDSVILLE-MADISON LINE IN MADISON COUNTY, IL

Docket No. AB-33 (Sub-No. 99X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
LITTLE MOUNTAIN JUNCTION-LITTLE MOUNTAIN LINE
IN BOX ELDER AND WEBER COUNTIES, UT

Decided: August 2, 1999

By letter filed July 14, 1999, UP requested an extension of the Certificate of Interim Trail Use (CITU) and Notice of Interim Trail Use (NITU) negotiation periods in each of the above-docketed proceedings.² Specifically, UP requested a 6-month extension (through February 8, 2000) for the lines over which service already has been discontinued, and a 1-year extension (through August 8, 2000) for the lines over which service has not been discontinued. By decision served July 30, 1999 (decided July 23, 1999), the periods for negotiations for interim trail use/rail banking in Docket No. AB-3 (Sub-No. 133X), and Docket No. AB-33 (Sub-Nos. 93X, 96, 97X, 98X and 99X) were extended to February 8, 2000, and the periods for negotiations for interim trail use/rail banking in Docket No. AB-12 (Sub-Nos. 184X and 187X) were extended to August 8, 2000.³

² The negotiation periods for the CITUs, served on September 10, 1996, and NITUs, served and published in the Federal Register on August 12, 1996 (61 FR 41823-30), had authorized, among other things, a 180-day period for MPRR, UPRR and SPT to negotiate an interim trail use/rail banking agreement with various parties and governmental agencies. The negotiation periods for these proceedings were extended by decisions served February 10, 1997, January 26, 1998, and August 5, 1998.

³ In Docket No. AB-33 (Sub-No. 96) the extension of the NITU did not cover the bridge near
(continued...)

On July 26, 1999, The National Association of Reversionary Property Owners (NARPO) filed a request that the Board: (1) require eight filing fees from UP for their extension requests; (2) not exempt the bridge from trail use on the southern end of the Barr-Girard line in Docket No. AB-33 (Sub-No. 96); and (3) not extend the negotiating time periods for more than 180 days. On July 29, 1999, UP filed a response in opposition to the NARPO filing. NARPO's requests will be denied.

First, NARPO's request that UP pay eight filing fees for their extension requests is baseless. As UP points out, the Board's rules presently do not require filing fees for extensions of previously granted trail use conditions. See 49 CFR 1002.2. New filing fees may be established only through rulemaking proceedings. Moreover, it is not the responsibility of the railroad proposing abandonment of a line,⁴ but rather the party interested in acquiring or using a right-of-way of a rail line proposed to be abandoned for interim trail use and rail banking, who files the original request with a filing fee.

Second, there also is no basis for requiring that the Barr-Girard line bridge continue to be subjected to a trail use condition. Such conditions are based on the owner railroad's willingness to negotiate a trail use agreement and UP has indicated that it no longer is willing to consent to the continuation of the trail use condition as to this bridge. Furthermore, here, it does not appear that removal of the bridge, which is located at the south end of the line, would prohibit the restoration of future rail service. UP notes that:

the Barr-Girard line connects with active UP tracks on both the north and south end, and crosses three other rail lines between its end points [The Burlington Northern and Santa Fe Railway Company, Gateway Western Railway Company, and Norfolk Southern Corporation]. The removal of the bridge at the south end does not affect the connection with the north end or potential connections with the other three lines.

³(...continued)

milepost 89.4 at the South end of the line near Girard, IL.

In Docket No. AB-33 (Sub-No. 97X) the extension of the NITU did not cover the 0.6-mile segment between milepost 119.2 and milepost 119.8 near DeCamp, IL.

In Docket No. AB-33 (Sub-No. 98X) the extension of the NITU did not cover the 3.58-mile portion between milepost 145.2 near Granite City and milepost 148.78 near Madison, IL.

⁴ UP notes that it has already fulfilled its obligation to pay the filing fees (totaling \$118,300) for all the abandonments/discontinuances proposed in the UP/SP merger proceeding, of which \$15,600 represented filing fees for the eight abandonments described above. See Attachment I of the July 29, 1999 UP filing.

Third, NARPO's request that the Board not grant extensions for more than 180 days is rejected. Because negotiation for trail use is a completely voluntary process, there is no compelling reason to restrict all extension requests to 180 days where the parties involved desire extension of certain trail use conditions for longer periods. As UP points out, contrary to NARPO's claim, the Board has extended the CITU/NITU negotiating periods for more than 180 days at a time. In fact, in decisions served February 10, 1997, and August 5, 1998, the Board granted 1-year extensions for negotiations in UP/SP merger-related abandonment proceedings. As explained in the February 10, 1997 decision:

These extension requests exceed the customary 180-day request. The customary 180-day period is not statutory, however, but was adopted to promote the expeditious conclusion of negotiations. See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 605 (1986). In keeping with 49 CFR 1100.3 and the consensual nature of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), the requested extension will be granted.

In conclusion, the relief being requested by NARPO (which, as UP points out, does not claim to be representing anyone located on or near any of the lines) is denied, and the July 30, 1999 decision granting UP's extension requests is affirmed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NARPO's requests are denied.
2. The decision is effective on the service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary