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SERVICE DATE - DECEMBER 31, 1996

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-3 (Sub-No. 139X)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT AND DISCONTINUANCE
OF OPERATIONS EXEMPTION--IN HOUSTON, HARRIS COUNTY, TX

STB Docket No. AB-423 (Sub-No. 2X)

HOUSTON BELT & TERMINAL RAILWAY COMPANY--DISCONTINUANCE OF
OPERATIONS EXEMPTION--IN HOUSTON, HARRIS COUNTY, TX

Decided: December 23, 1996

By petition filed October 22, 1996, Missouri Pacific Railroad Company (MP) and Houston Belt & Terminal Railway Company (HB&T) (collectively, petitioners) jointly seek to be exempted under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for MP to abandon and discontinue, and HB&T to discontinue, operations over a 0.52-mile segment (approximately 2,760 track feet) of the Columbia Tap Branch (Columbia Tap) between the end of the line at Engineering Station (E.S.) 261+00 and E.S. 288+60 near Houston, in Harris County, TX.¹ Petitioners also seek to be exempted from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. An accompanying letter from Grocers Supply Co. Inc. (Grocers), the line's only shipper, supports the proposed abandonment and discontinuances and urges expedition. The United Transportation Union requests that labor protective conditions be imposed. Based on the evidence of record, we will grant the requested exemptions subject to standard employee protective conditions.

BACKGROUND

The Columbia Tap generally extends in a southerly direction from E.S. 261+00, at the end of the line, to Arcola, TX. The 0.52-mile line segment begins at E.S. 261+00, a short distance north of Texas Highway 288, and terminates at E.S. 288+60, a point just short of the switch near Holcombe Blvd. It is located on approximately 6.3404 acres of non-reversionary real estate, and was constructed in 1860. The line contains 90-pound track material and is maintained at FRA class 1 standards. Because it is the end of the line, there is no movement of overhead traffic. Basically, the segment is used once a week to deliver shipments of food products to Grocers' main food distribution warehouse via a switch on the south side of Highway 288. Petitioners assert that Grocers will not be adversely affected by the proposed abandonment and discontinuances; service will continue via a switch just south of the 0.52-mile segment, near Holcombe Blvd.

¹ MP is operated under common control and management with Union Pacific Railroad Company and Southern Pacific Transportation Company. HB&T, a terminal railroad operating within Houston, leases and operates rail lines owned by its parent railroads, MP and Burlington Northern Santa Fe Railroad Company. The line segment MP seeks to abandon was leased to HB&T in 1950.

Petitioners request expedited action. They state that Grocers supports the proposed abandonment and discontinuances and that it plans to use the portion of the right-of-way adjacent to its property to expand its warehouse and consolidate operations under one roof. Grocers seeks to acquire the right-of-way by December 31, 1996, because its satellite warehouse lease is to expire on March 31, 1998, and at least 15 months will be required to complete the expansion of its main warehouse.

Petitioners state that the Houston Department of Public Works (HDPW) plans to purchase the remainder of the right-of-way, a short piece of the line at the northern tip, to extend a proposed hiking and bike trail.

DISCUSSION AND CONCLUSIONS

Abandonment exemption. Under 49 U.S.C. 10903, a rail line may not be abandoned and operations may not be discontinued without our 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 the transactions is not necessary to carry out the rail transportation policy. Exempting the proposed transactions will minimize the need for Federal regulatory control over rail transportation, and, by eliminating the expense and time required to prepare and process applications to abandon and discontinue service, will expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. By eliminating the costs associated with maintaining and operating unnecessary track and allowing MP to liquidate less productive assets and redeploy them, and the services it offers, more efficiently on the remainder of its rail system, exemptions will foster sound economic conditions, ensure the development and continuation of a sound and efficient rail transportation system, and encourage efficient management [49 U.S.C. 10101(3), (4), (5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is not necessary to protect shippers from an abuse of market power. The line's only shipper supports the proposed abandonment and discontinuances and will continue to receive rail service from another switch located just to the south.²

Labor protection. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve carriers of their statutory obligation to protect the interests of their employees. Accordingly, as a condition to granting these exemptions, we will impose the employee protective conditions in Oregon Short line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

² Given our market power finding, we need not determine whether the proposed abandonment and discontinuances of service with respect to 0.52 miles of rail line in a single county and state is limited in scope.

Environmental conditions. Petitioners submitted a combined environmental and historic report with their petition, and notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impact of the proposed actions. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the report, verified its data, analyzed the probable effects of the proposed actions on the quality of the human environment, and served an environmental assessment (EA) on November 20, 1996.

In the EA, SEA noted that a portion of the line will be sold to Grocers to expand its warehouse and the remainder will be sold to HDPW for use as a trail. Otherwise, SEA noted that the line does not appear suitable for other public purposes because the area is adequately served with transportation, conservation, and energy alternatives and the line is very short. No comments to the EA were filed by the December 13, 1996 due date.³ Based on SEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

Other exemptions. To expedite the post-abandonment transfer of the portion of the right-of-way needed by Grocers, petitioners request that the abandonment and discontinuances be exempted from the OFA requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. Grocers supports the proposed abandonment and discontinuances and urges expedition to permit it to acquire the right-of-way no later than December 31, 1996.

Exemptions from 49 U.S.C. 10904-05 have been granted from time to time, but only when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.⁴ The bulk of the right-of-way is critical to Grocers' expansion plans, the segment appears unsuitable for public use, and there is no interest in, or need to continue, rail service over the segment to be abandoned. Indeed, the segment is very short and stub-ended and has no potential for rail use inasmuch as the only shipper intends to convert the right-of-way to non-rail use. On the other hand, the imposition of OFA procedures or a public use condition could delay the transfer of the needed portion of the right-of-way to Grocers for a valid use and ultimately jeopardize the timely completion of the warehouse expansion. Accordingly, to accommodate Grocers' request for expedition, we will exempt the

³ A late-filed comment from the Department of the Army (Army) notes that the proposed abandonment and discontinuances do not require an Army permit.

⁴ See Southern Pacific Transportation Company--Discontinuance of Service Exemption--In Los Angeles County, CA, Docket No. AB-12 (Sub-No. 172X), et al. (ICC served Dec. 23, 1994); Missouri Pacific Railroad Company--Abandonment--In Harris County, TX, Docket No. AB-3 (Sub-No. 105X) (ICC served Dec. 22, 1992); Chicago & North Western Transportation Company--Abandonment Exemption--In Blackhawk County IA, Docket No. AB-1 (Sub-No. 226X) (ICC served July 14, 1989); and Iowa Northern Railway Company--Abandonment--In Blackhawk County, IA, Docket No. AB-284 (Sub-No. 1X) (ICC served Apr. 1, 1988).

proposed abandonment and discontinuances from the OFA and public use requirements of 49 U.S.C. 10904-05.⁵

The evidence of record establishes that the proposed exemptions from 49 U.S.C. 10904-05 meet the criteria of 49 U.S.C. 10502. Applying the OFA or public use requirements, in this instance, is not necessary to carry out the rail transportation policy. Allowing the abandonment and discontinuance exemptions to become effective immediately, without first being subject to these requirements, will minimize the need for Federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. We have already determined that regulation is not necessary to protect shippers from an abuse of market power.

Other matters. Having exempted the proposed abandonment and discontinuances from 49 U.S.C. 10904 and 10905, we have eliminated the need to extend the effective date of the abandonment exemption to consider OFAs under Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), and requests for public use conditions under 49 CFR 1152.28(a)(2). Therefore, we will make the decision effective on its date of service.

We will not provide 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. Because MP has already agreed to sell the bulk of the right-of-way to Grocers for a warehouse expansion and to HDPW for a trail extension, it can be expected to decline offers to negotiate interim trail use.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt, from the prior approval requirements of 49 U.S.C. 10903 and the requirements of 49 U.S.C. 10904-05, the abandonment and discontinuance of operations by MP and the discontinuance of operations by HB&T 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 December 31, 1996.

3. This decision will be effective on the date of service.

4. Petitions to reopen must be filed by January 21, 1997.

⁵ Petitioners do not specify the precise portion of the line to be acquired by Grocers but suggest that it will be all but a short piece of the line at the northern tip. While no need was given for extending the exemptions from 49 U.S.C. 10904-05 to the northern tip, we will do so, rather than delaying our decision to clarify the matter, because the northern tip is very short, will no longer connect with any other rail line, and will be acquired for a public use.

STB Docket No. AB-3 (Sub-No. 139X), et al.

By the Board, Chairman Morgan, Vice Chairman Simmons, and
Commissioner Owen.

Vernon A. Williams
Secretary