

10901 over UP's decision to rehabilitate and reactivate 16.7 miles of line passing through New Braunfels, TX.

**DATES:** Any interested person may file with the Board written comments concerning UP's petition by June 22, 1998. UP may reply by June 30, 1998.

**ADDRESSES:** Send an original plus 10 copies of all pleadings, referring to STB Finance Docket No. 33611, to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33611, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, pleadings must certify that a copy has been served on UP's representatives: J. Michael Hemmer and Pamela L. Miles, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, DC 20044-7566.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

**SUPPLEMENTARY INFORMATION:** By petition filed on May 26, 1998, UP requests the Board to issue an order under 49 CFR 1117.1 declaring that its rehabilitation of the segment of the former Missouri-Kansas-Texas Railroad (MKT) line that runs parallel to UP's mainline in the New Braunfels, TX area does not need to be reviewed by the Board under 49 U.S.C. 10901.<sup>1</sup> According to UP, the City Council of New Braunfels adopted in May a resolution requesting UP to permanently cease rehabilitating the line.

UP states that it has encountered significant congestion on its Austin Subdivision north of San Antonio. UP maintains that, because of inadequate rail capacity on this route, it has been unable to haul all of the aggregates needed by the Texas construction industry. To remedy the capacity problem, UP has begun rehabilitating the former MKT line between UP milepost 219.5 at Jude, TX (about 10 miles south of San Marcos), and UP milepost 236.2 at Ogden Junction, TX, a distance of about 16.7 miles.<sup>2</sup> UP claims that this rehabilitation project will eliminate the only single-track section on the 56 miles between San Marcos and San Antonio.

UP notes that, in the UP-MKT merger (*Union Pacific Corp. Et Al.-Cont.—MO-*

*KS-TX Co. et al.*, 4 I.C.C.2d 409 (1988)), the Interstate Commerce Commission (ICC) granted abandonment authority for the line.<sup>3</sup> UP states that, while service has been discontinued on the line, the track was not removed and, except for a few locations, the line is intact.<sup>4</sup> Parts of the track continue to be used.<sup>5</sup>

UP argues that 49 U.S.C. 10901 does not give the Board authority over all rail track projects. It notes that 49 U.S.C. 10906 excludes spur tracks from Board construction jurisdiction. While the line at issue is not a spur, UP contends that some track projects fall between section 10906 exclusions and section 10901 jurisdiction, because they are neither "an extension" of a rail line nor "an extension of a railroad line."

Specifically, UP argues that section 10901 does not apply to this situation because it is a "mere addition of a second track to an existing line or railroad, [and it does] not alter the competitive situation by injecting a carrier into a new service area."

UP cites *Missouri Pacific R.R.—Construction and Operation Exemption—Avondale, LA*, STB Finance Docket No. 33123, (STB served July 11, 1997) at 2 for the proposition that "[a]n extension or addition to a rail line occurs when a construction project enables a carrier to penetrate or invade a new market." UP claims that it is not creating a new rail line, but simply reinstating service on a previously operated line. Moreover, it argues that it is not penetrating new territory, because UP is the only railroad serving customers in the area.<sup>6</sup>

UP also contends that its rehabilitation is not a line addition or

extension, because it is simply developing a second main line or "double tracking" to increase the capacity of the existing mainline. According to UP, the ICC found that it did not have jurisdiction over double track construction. *City of Detroit v. Canadian National Ry.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Authority v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995) and *City of Stafford, Texas v. Southern Pacific Transportation Co.*, Finance Docket No. 32395 (ICC served Nov. 8, 1994) *aff'd sub nom. City of Stafford v. ICC*, 59 F.3d 535 (5th Cir. 1995).

By this notice, the Board is requesting comments on UP's petition.

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Decided: June 1, 1998.

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

**Vernon A. Williams,**

*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 121X)]

### Union Pacific Railroad Company— Abandonment Exemption—in Arkansas County, AR

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon and discontinue service over a 26.0-mile line of railroad on the Stuttgart Branch from milepost 236.0 near Ricusky to the end of the line at milepost 262.0 near Indiana, in Arkansas County, AR. The line traverses United States Postal Service Zip Code 72042.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (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 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and

<sup>1</sup> Under 49 U.S.C. 10901(a), a carrier may "(1) construct an extension to any of its railroad lines; (2) construct an additional railroad line; [or] (3) provide transportation over, or by means of, an extended or additional railroad line; \* \* \* only if the Board issues a certificate authorizing such activity."

<sup>2</sup> According to UP, the line rehabilitation will "accommodate the current volume of traffic in this area, meet the unmet needs of local shippers, and handle expected growth of Laredo gateway traffic."

<sup>3</sup> Although no citation is given, it appears that in the merger the line was authorized for abandonment in *Missouri-Kansas-Texas Railroad Company-Abandonment Exemption-In Comal County, TX*, Docket No. AB-102 (Sub-No. 18X).

<sup>4</sup> UP states that, although the lines are not located within the same right-of-way, in some places they are only 100 feet apart. Based on the map provided by UP, it also appears that in one place the lines are more than 1.5 miles apart.

<sup>5</sup> UP states that a shipper in New Braunfels is being served over about one-half mile of the former MKT line. UP also uses another 4000 feet of track to serve a lumber shipper. Prior to the rehabilitation, additional segments of the line were evidently used for storage.

<sup>6</sup> UP claims that this case differs from *Dakota Rail, Inc.—Petition for Exemption from 49 U.S.C. 10901, 10903 & 11301*, Finance Docket No. 30721 (ICC served Apr. 10, 1986) (*Dakota*). There the ICC indicated that the carrier would need to seek authority to resume service over a line it had abandoned. UP argues that the discussion in *Dakota* was simply dicta. Moreover, the line abandoned there was the only one in that geographic area, and if service were resumed, the carrier would arguably be entering new territory. Here, UP submits, UP maintained service in the area even after the abandonment through the use of its parallel track.

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 R. Co.—*

*Abandonment—Goshen*, 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. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 5, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 15, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 25, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68170.

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

UP has filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 10, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking

<sup>1</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>2</sup> Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

conditions will be imposed, where appropriate, in a subsequent decision.

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 June 5, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

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Decided: May 27, 1998.

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

Vernon A. Williams,  
Secretary.

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## DEPARTMENT OF THE TREASURY

### Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Renewal of Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service and solicitation of applications for committee membership.

**SUMMARY:** It is in the public interest to renew the Advisory Committee for another two-year term. This notice also establishes criteria and procedures for the selection of members.

**FOR FURTHER INFORMATION CONTACT:** Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement). (202) 622-0220. Pursuant to the Federal Advisory Committee Act 5 U.S.C. App. I (1962), and section 95603 © of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), the Under Secretary (Enforcement) announces the renewal of the following advisory committee:

**Title:** The Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

**Purpose:** The purpose of the Committee is to present advice and recommendations to the Secretary of the Treasury regarding commercial operations of the U.S. Customs Service and to submit a report to Congress containing a summary of its operations and its views and recommendations.

**Statement of Public Interest:** it is in the public interest to continue the

existence of the Committee upon expiration, under the provisions of the Advisory Committee Act, of its current two-year term. The Committee provides a critical forum for distinguished representatives of diverse industry sectors to present their views on major issues involving commercial operations of the Customs Service. These views are offered directly to senior Treasury and Customs officials on a regular basis in a candid atmosphere. There exists no other single body that serves a comparable function.

#### SUPPLEMENTARY INFORMATION:

##### Background

In the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), Congress repealed the statutory mandate for a Customs User Fee Advisory Committee and directed the Secretary of the Treasury to create a new Advisory Committee on Commercial Operations of the U.S. Customs Service. The original Committee consisted of 20 members drawn from industry sectors affected by Customs commercial operations. The Committee's charter was filed on October 17, 1988 and expired two years later. Charters were subsequently filed for second, third, and fourth, and fifth two-year terms. The current charter will expire on October 15, 1998. The Treasury Department plans to file a new charter by that date renewing the Committee for a sixth two-year term.

##### Objective, Scope and Description of the Committee

The Committee's objectives are to advise the Secretary of the Treasury on issues relating to the commercial operations of the Customs Service. It is expected that, during its sixth two-year term, the Committee will consider such issues as implementation of the Customs Modernization Act, administration of staff and resources for commercial operations, informed compliance and compliance assessment, the account system, automated systems, the International Trade Data System, the Year 2000 conversion, commercial enforcement, international efforts to harmonize customs practices and procedures, strategic planning, and northern border and southern board issues and the relationships with Canadian Customs and Mexican Customs.

The Committee will be chaired by the Assistant Secretary of the Treasury for Enforcement. The Committee will function for a two-year period before renewal or termination and will meet approximately eight times (quarterly) during the period. Additional special