

**SURFACE TRANSPORTATION BOARD RULES THAT UNION PACIFIC DOES NOT NEED
BOARD APPROVAL TO REHABILITATE NE BRAUNFELS LINE**

FOR RELEASE: Contact: Dennis Watson
Friday, August 21, 1998 (202) 565-1596
No. 98-53 TDD/TDY 1 (800) 877-8339
www.stb.dot.gov

**SURFACE TRANSPORTATION BOARD RULES THAT
UNION PACIFIC DOES NOT NEED BOARD APPROVAL TO REHABILITATE
NEW BRAUNFELS LINE**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision declaring that the Union Pacific Railroad (UP) does not require Board authority to rehabilitate a rail line in the New Braunfels area of central Texas. The provisions of 49 U.S.C. 10901(a) require Board approval before any person may 'construct an extension to any of its railroad lines . . . [or] construct an additional railroad line. . . .' Because the law as originally enacted was designed to encourage railroads to maintain and improve services to their existing customers before spending capital constructing facilities to serve new customers, court precedent has held that the Board's jurisdiction under section 10901(a) is triggered by construction that enables a carrier to enter a new market.

Over the past year, UP has experienced service problems caused, in part, by the recent expansion of the economy in the face of a shrinking rail plant. The Board has recognized that investment in rail infrastructure will be necessary to ensure that service can better meet the needs of the booming economy, and UP itself has pledged to commit well over \$1 billion to infrastructure improvements. One such capital improvement project involves rehabilitating an abandoned line on UP's Austin Subdivision north of San Antonio serving, among other things, the cement and aggregates business. UP currently has single-track service in that area, and, given a surge in demand in the Texas construction industry, UP has recently been unable to haul all of the cement and aggregates that has been tendered to it. Bringing the abandoned line back into service is intended to upgrade service to the Texas construction industry and other industries.

UP asked the Board to declare that its rehabilitation project does not require Board approval because it would not penetrate new territory, but rather would simply enhance existing operations by adding what is in effect a second mainline that is roughly parallel to the existing mainline. The City of New Braunfels, however, opposed UP's position. New Braunfels recognized that there is congestion on the Austin Subdivision, and that UP needs to make improvements to alleviate service problems. But it argued that, because the track at issue is not within the right-of-way of the currently used mainline, and in fact had been approved for abandonment by the Board's successor, the Interstate Commerce Commission, it could not be brought back into service without formal Board approval, including full review under the National Environmental Policy Act (NEPA).

The Board agreed with UP that Board approval would not be required. That the line may be outside the right-of-way of the existing mainline, or that it had earlier been authorized for abandonment, the Board found, is not determinative of the Board's jurisdiction. Rather, what is significant, the Board found, is that UP's rehabilitation and reactivation of its line does not penetrate or invade a new market, but simply augments the capacity of existing main line operations by eliminating the single track bottleneck over a portion of the line.

Thus, it will not reach into new territory or serve new shippers, but will simply improve service to UP's existing shippers. In recognizing the safety and environmental concerns that have been raised, the Board noted that state and local agencies play a significant role under many environmental statutes, and that, in any event, UP has undertaken to work with the affected community to look for mutually beneficial ways to mitigate potential environmental and other local concerns.

The Board's decision was issued today in Union Pacific Railroad Company--Petition For Declaratory Order--Rehabilitation of Missouri-Kansas-Texas Railroad Between Jude and Ogden Junction, TX, STB Finance Docket No. 33611.

###