

Surface Transportation Board Denies Salt Lake City's Application for Abandonment of "Union Pacific" Rail Line in That City

Surface Transportation Board (Board) Linda J. Morgan announced today that the Board has issued a decision denying the application of the Salt Lake City Corporation (City) seeking the adverse abandonment (one filed by a party other than the railroad) of a 1.32-mile Union Pacific Railroad Company (UP) line in Salt Lake City, Utah (the Line). The decision balances the concerns of the City and local interests against the Federal interest in maintaining the Line as part of the interstate rail network.

UP opposed the City's abandonment proposal. UP had suspended service in 1999 over the Line because of a highway construction project, but resumed operations in December 2001. UP is now rerouting approximately 10-12 freight trains a day over the Line, away from the congested Grant Tower area, to increase velocity, reduce congestion, and increase capacity on its main lines through the Salt Lake City area. UP did not need the Board's permission to reactivate the Line or to reroute its trains. The issue presented to the Board by the City's application was not whether UP could reactivate the Line, but whether the Board should allow the City to pursue court remedies to require UP to abandon it under the statutory public convenience and necessity standard.

The cornerstone of the City's case is an alleged breach of a 1989 franchise agreement between UP and the City. Under the City's interpretation of that agreement, because UP suspended service over the Line in 1999, UP is contractually obligated to remove the tracks from the Line and, by implication, to seek abandonment authority to do so from the Board. The City argued that UP, in doing neither, is in breach of contract and that the Board should grant the proposed abandonment so that the City might enforce its contract claim. However, in a previous decision in the case entitled *Union Pacific Railroad Company--Petition for Declaratory Order*, STB Docket No. 34090, issued November 9, 2001, the Board had earlier found that the City could not enforce the same franchise agreement and provisions requiring UP to remove its tracks from the Line. The Board explained that, while it will not allow a railroad to use the Board's jurisdiction to shield it from its voluntary contractual obligations, that principle does not apply in this case because UP cannot voluntarily contract away the Board's jurisdiction to determine whether there is a public need for a rail line. The Board noted that there clearly is a potential for continued rail service on the Line.

The City and public commenters also raised safety, traffic and quality of life concerns about UP's reactivation of the Line and its potential impacts on the community. The Board noted that, while these concerns are understandable, they are not unique to Salt Lake City; similar concerns are shared by communities on other rail lines throughout the Nation. The Board weighed the City's and public's concerns and found that they do not outweigh the overriding Federal interest in maintaining the Line as part of the interstate rail network.

The City further alleged that the Line's reactivation would be contrary to Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations." However, the Board's Section of Environmental Analysis (SEA) concluded that the proposed abandonment does not warrant an environmental justice demographic analysis because the Line's abandonment would not adversely affect the community. The Board agreed with SEA and explained that the agency's review relates only to the Line's abandonment, not the reactivation of service over it for which no agency approval is necessary. Because the City's environmental justice claims all relate to the effect of increased traffic on the Line, the Board found that they were beyond the scope of this abandonment proceeding.

In sum, the Board denied the City's application because it failed to demonstrate that the present or future public convenience and necessity require or permit the Line's abandonment. In considering the City's arguments and the concerns of the City and community, the Board found that they were outweighed by the overriding Federal interest in the present and future operation of the Line in interstate commerce.

The Board issued its decision today in the case entitled *Salt Lake City Corporation-- Adverse Abandonment--In Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183). A printed copy of that decision is available for a fee by contacting **D-- 2-D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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