

39698
DO

SERVICE DATE – FEBRUARY 24, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 251X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN DANE COUNTY, WI

Decided: February 23, 2009

Union Pacific Railroad Company (UP) and Wisconsin & Southern Railroad Company (WSOR) jointly filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for UP to abandon and WSOR to discontinue service over a 4.4-mile line of railroad, known as the Central Soya Line, Harvard Subdivision, between milepost 85.5 in the City of Madison and milepost 89.9 in the City of Fitchburg, in Dane County, WI. Notice of the exemption was served and published in the Federal Register on May 2, 2005 (70 FR 22758). By decision and notice of interim trail use or abandonment (NITU) served on May 31, 2005, a 180-day period was authorized for Wisconsin Department of Natural Resources (WisDNR) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ The negotiating period under the NITU was extended several times; the latest decision, served on May 28, 2008, extended the negotiating period until November 12, 2008. At the request of the Wisconsin Department of Transportation (WisDOT), on behalf of the City of Madison (Madison), the Board vacated the existing NITU and issued a replacement NITU on July 29, 2008, authorizing Madison to negotiate with UP and to serve as the interim trail manager for the rail line.

On January 26, 2009, WisDOT, on behalf of Madison and the City of Fitchburg (Fitchburg), made a request for Madison and Fitchburg to jointly assume full responsibility for the responsibility previously assumed by Madison pursuant to the NITU filed under 49 CFR 1152.29(a), authorized by the Board in its decision served on July 29, 2008. Madison and Fitchburg submitted the required statement of willingness to assume financial responsibility for interim trail use and rail banking pursuant to the Trails Act with respect to the 4.4-mile rail line. Madison and Fitchburg acknowledged that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service and that they are willing to assume full financial responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any taxes or assessment that thereafter may be lawfully

¹ The May 31, 2005 decision and notice also made the exemption subject to several environmental conditions.

levied against the property, which, according to the statement of willingness, Madison acquired from UP in July 2008. On February 4, 2009, UP filed a letter stating that it concurs with WisDOT's request for joint financial responsibility of the rail line.

WisDOT's request for a NITU meets the requirement of 49 CFR 1152.29(a) and will be granted. Accordingly, this proceeding will be reopened to the limited extent that Fitchburg will be added as an interim trail sponsor.

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

It is ordered:

1. This proceeding is reopened.
2. The NITU served July 29, 2008, is vacated.
3. A replacement NITU applicable to Madison and Fitchburg as interim trail users is issued, effective on the service date of this decision and notice, subject to the environmental conditions that remain in effect.
4. The trail users are required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the users are immune from liability, in which case they need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the users' continuing to meet the financial obligations for the right-of-way.
6. If the trail users intend to terminate trail use, they must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary