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SERVICE DATE – LATE RELEASE JUNE 12, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 268X)

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

Decided: June 11, 2009

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 3.08-mile line of railroad known as the Capitol Drive Industrial Lead, extending from milepost 92.21, the Shoreline connection, to the end of the line at milepost 89.13, south of Hampton Avenue in the Northeast Milwaukee area, in Milwaukee County, WI. Notice of the exemption was served and published in the Federal Register on April 9, 2009 (74 FR 16256-57). The exemption became effective on May 9, 2009.¹

On May 1, 2009, and as supplemented on May 11, 2009, the Wisconsin Department of Transportation (WisDOT), on behalf of Milwaukee County, WI, late filed a request for issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29.² WisDOT has submitted a statement of willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it 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 (ROW), as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. In a letter filed on May 5, 2009, UP states it is willing to negotiate with WisDOT for interim trail use.

¹ The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) on April 14, 2009, recommending that an environmental condition and a historic preservation condition be imposed on the proposed abandonment. By decision served on May 8, 2009, the exemption was made subject to these conditions.

² In the EA, SEA indicated that the right-of-way (ROW) may be suitable for other public use following abandonment. The April 9, 2009 notice provided that trail use/rail banking requests were to be filed by April 20, 2009. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that WisDOT's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

Because WisDOT's request complies with the requirements of 49 CFR 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, provided that the environmental and historic preservation conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to any future use of the property for restoration of railroad operations.

This action 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 late-filed request for a NITU, under 16 U.S.C. 1247(d), is granted.
3. Upon reconsideration, the notice served and published in the Federal Register on April 9, 2009, exempting the abandonment of the 3.08-mile line of railroad described above, is modified to the extent necessary to implement interim trail use/ rail banking as set forth below to permit WisDOT to negotiate with UP for trail use of the subject line, for a period of 180 days commencing from the service date of this decision and notice.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user 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 user is immune from liability, in which case it 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 ROW.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. If an agreement for interim trail use/rail banking is reached by December 9, 2009, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the environmental and historic preservation conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

8. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary