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SERVICE DATE - AUGUST 30, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 189X)

UNION PACIFIC RAILROAD—ABANDONMENT EXEMPTION—  
IN EAU CLAIRE COUNTY, WI

Decided: August 29, 2002

By petition filed on May 14, 2002,<sup>1</sup> Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903<sup>2</sup> to abandon its line of railroad known as the Eau Claire Industrial Lead, extending between milepost 0.00 near N. Barstow Street and milepost 1.65 south of Truax Boulevard, a distance of 1.65 miles, in Eau Claire, Eau Claire County, WI. The Wisconsin Department of Transportation (WisDOT),<sup>3</sup> on behalf of the City of Eau Claire, WI (CECW),<sup>4</sup> requests issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d). We will grant the exemption subject to trail use, environmental, and standard employee protective conditions.

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on June 3, 2002 (67 FR 38315-16).

<sup>2</sup> UP's petition states that it seeks exemption from the provisions of 49 U.S.C. 10903-05, thus evidently including exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. UP has not submitted evidence to establish that the proposed exemption from sections 10904 and 10905 meet the criteria of 49 U.S.C. 10502. Therefore, its request as to those two provisions will not be considered. The request as to section 10905 appears to be moot in any event as no requests for public use conditions have been filed.

<sup>3</sup> WisDOT is the designated state agency for rail matters in the State of Wisconsin. It has the statutory right to acquire for present or future transportation, recreational, or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin.

<sup>4</sup> CECW is a municipal corporation that may acquire property within or outside the city for parks, recreation or any other public purpose.

## BACKGROUND

According to UP, the only shipper that uses the line, Central Storage Warehouse (CSW), which operates a facility at Eau Claire, supports its abandonment and discontinuance of operations.<sup>5</sup> UP states that CSW ships and receives various frozen, canned, and dried foods and dairy products. UP further states that CSW handled a total of 70 carloads in the year 2000, 74 carloads in the year 2001, and 40 carloads in the year 2002 between January 1 and April 30. UP indicates that, as a result of an agreement between CSW and it, CSW is willing to relocate its rail shipping operations to its facilities in Menomonie, WI, as long as operations commence prior to UP's abandonment of rail service at CSW's Eau Claire facility. UP states that it will comply with CSW's request.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the abandonment application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption will also foster sound economic conditions by permitting UP to avoid the need to retain and operate a line that has been used by only one shipper that is willing to relocate its shipping operations to another rail line [49 U.S.C. 10101(5)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power because CSW, the only shipper on the line, does not object to abandonment. Nevertheless, to ensure that the shipper is informed of our action, we will require UP to serve a copy of this decision on CSW within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective condition set forth in Oregon Short Line R. Co.-- Abandonment--Goshen, 360 I.C.C. 91 (1979).

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<sup>5</sup> UP submitted a letter in support from CSW with its petition.

UP has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local government agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on July 12, 2002, and requested comments.

In the EA, SEA indicated that the Wisconsin Historical Society (WI SHPO) has determined that the bridge over the Chippewa River may be eligible for listing in the National Register of Historic Places. Therefore, SEA recommends that, pending resolution of this issue, UP be required to retain its interest in and take no steps to alter the historic integrity of this bridge until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

No comments to the EA were filed by the August 12, 2002 due date. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. We note that no one has sought a public use condition, and none will be imposed.

As noted, WisDOT, on behalf of CECW, requests issuance of a NITU for the right-of-way involved in this proceeding. Acquisition of the rail corridor would allow CECW to use the right-of-way for trail purposes. CECW has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that the use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. UP, responding to the request, states that it is willing to negotiate with CECW for interim trail use.

Because WisDOT's request complies with the requirements of 49 CFR 1152.29, and UP is willing to enter into negotiations, we will issue a NITU for the described line. The parties may negotiate an agreement during the 180-day period described below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to the condition imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986), OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the

effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use process may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that UP shall: (1) retain its interest in and take no steps to alter the historic integrity of the bridge over the Chippewa River until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) comply with the terms and conditions for implementing interim trail use/rail banking set forth below.

2. UP is directed to serve a copy of this decision on Central Storage Warehouse within 5 days after the service date of this decision and certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached, it must require the rail user to assume, for the term of the agreement, full responsibility for management of, 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.

4. 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 right-of-way.

5. 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.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by September 9, 2002, subject to time extensions authorized under 49 CFR

1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,100 filing fee. See 49 CFR 1002.2(f)(25).

8. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

9. Provided no OFA has been received, this exemption will be effective on September 29, 2002. Petitions to stay must be filed by September 16, 2002; petitions to reopen must be filed by September 24, 2002.

10 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 August 30, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary