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SERVICE DATE – JUNE 29, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 313X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN MIAMI COUNTY, KAN.

Decided: June 26, 2015

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 0.50 miles of the Osawatomie Industrial Lead, from milepost 335.0 to milepost 335.5 near Osawatomie, in Miami County, Kan. Notice of the exemption was served and published in the Federal Register on July 23, 2013 (78 Fed. Reg. 44,190). On August 19, 2013, a decision and notice of interim trail use or abandonment (NITU) was served in this proceeding, authorizing a 180-day period, until February 15, 2014, for the City of Osawatomie (the City) to negotiate an interim trail use/rail banking agreement with UP for the line pursuant to the National Trails System Act, 16 U.S.C. § 1247(d). UP and the City subsequently reached a trail use/rail banking agreement for 0.45 miles of the line, between milepost 335.05 and milepost 335.5.¹

By joint request filed on March 31, 2015, and supplemented on May 4, 2015, the City and the Kanza Rail-Trails Conservancy, Inc. (KRTC) (collectively, petitioners), request that the Board, pursuant to 49 C.F.R. § 1152.29(f), reopen the proceeding, vacate the existing NITU, and issue a replacement NITU substituting KRTC as the new interim trail sponsor in place of the City.

Petitioners have submitted a copy of the extant NITU and a statement by KRTC of its willingness to assume 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 right-of-way, as required by 49 C.F.R. § 1152.29. Petitioners also acknowledge that the use of the right-of-way for trail purposes is subject to the user's continuing to meet the responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. Petitioners indicate that the date of transfer of responsibility for the right-of-way is scheduled to occur on July 1, 2015.

¹ Joint Notice of Interim Trail Use/Rail Banking Agreement between UP & the City, Nov. 26, 2014. On June 5, 2015, UP filed a corrected Joint Notice of Interim Trail Use/Rail Banking Agreement to correct a typographical error and clarify that it would continue to operate over the portion of the line between milepost 335.00 and milepost 335.05.

Petitioners' submission meets the requirements of 49 C.F.R. § 1152.29(f). Accordingly, petitioners' request will be granted and a replacement NITU will be issued.

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

It is ordered:

1. The proceeding is reopened.
2. The NITU served on August 19, 2013, is vacated.
3. A replacement NITU applicable to KRTC as interim trail sponsor is issued, effective on the service date of this decision and notice.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the new sponsor's continuing to meet the financial obligations for the right-of-way.
5. If the trail sponsor 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. This decision and notice is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.