

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 270X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN  
OSBORNE AND SMITH COUNTIES, KS

Decided: March 12, 2010

Union Pacific Railroad Company (UP) and Kyle Railroad Company (Kyle) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for UP to abandon, and for Kyle to discontinue service over, a 12.4-mile portion of a line of railroad known as the Lenora Branch Line, extending between milepost 540.3, west of Downs, KS, and milepost 552.7, west of Portis, KS, at the end of the line, in Osborne and Smith Counties, KS. Notice of the exemption was served and published in the Federal Register on July 28, 2008 (73 FR 43822-23) (July 2008 notice).<sup>1</sup> The exemption became effective on August 27, 2008. The time for UP to file its notice of consummation was extended by decisions served on July 27, 2009, and December 30, 2009, and currently expires on June 1, 2010.

On February 17, 2010, Sunflower Recreational Trails, Inc. (SRT), late filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29.<sup>2</sup> SRT 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

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<sup>1</sup> The July 2008 notice embraced STB Docket No. AB-486 (Sub-No. 5X), Kyle Railroad Company—Discontinuance of Service Exemption—in Osborne and Smith Counties, KS.

<sup>2</sup> The July 2008 notice established August 7, 2008, as the deadline for filing trail use/rail banking requests. Thus, the time for filing trail use requests has long since passed. 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 SRT's late-filed submission has not delayed the proceeding and will not 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).

reconstruction and reactivation for rail service. In a response filed on February 25, 2010, UP states that it is willing to negotiate with SRT for interim trail use.

Trail use requests may be accepted as long as the Board retains jurisdiction over the ROW and the carrier is willing to enter into negotiations. Because UP has not consummated the abandonment and is willing to negotiate for trail use with SRT, and SRT's request complies with 49 CFR 1152.29, a NITU will be issued for the line. 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, subject to any outstanding conditions. 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 decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. SRT's late-filed request for interim trail use/rail banking is accepted and granted.
3. Upon reconsideration, the July 2008 notice, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit SRT to negotiate with UP for trail use of the subject line, for a period of 180 day 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 any future use of the property for restoration of railroad operations 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 September 8, 2010, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line. 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.