

SERVICE DATE – NOVEMBER 13, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 262X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
FULTON AND PEORIA COUNTIES, IL

Decided: November 12, 2008

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 24.7-mile line of railroad on UP's Elm Industrial Lead from milepost 461.5, near Middle Grove, to milepost 486.2, at Molitor Junction, in Fulton and Peoria Counties, IL. Notice of the exemption was served on July 23, 2008, and published in the Federal Register on July 28, 2008 (73 FR 43823). The exemption was scheduled to become effective on August 22, 2008, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by August 4, 2008. In this decision, the Board is terminating the OFA process and imposing interim trail use/rail banking and public use conditions.

On July 31, 2008, Keokuk Junction Railway Co. (KJRY) filed a formal expression of intent to file an OFA to purchase UP's line proposed for abandonment. This filing automatically stayed the effective date of the exemption for 10 days, until September 2, 2008.¹ In the filing, KJRY requested that UP provide it with certain information including the information set forth in 49 CFR 1152.27(a). KJRY also requested that the Board toll the time period for submitting its OFA for an additional 30 days in order to provide KJRY with time to review and analyze the material to be provided by UP.

In a decision served on August 21, 2008 (August 21 decision), the Board granted V and S Railway, LLC's (VSR) petition for leave to late-file its notice of intent to file an OFA and, because UP did not object to the late filing, accepted VSR's late-filed formal expression of intent to file an OFA. In addition, the August 21 decision tolled the time period an additional 30 days for offerors to file an OFA, until September 22, 2008, and the effective date of the exemption was extended until October 2, 2008.²

¹ See 49 CFR 1152.27(c)(2)(i).

² In the August 21 decision, the Board imposed a condition recommended by the Board's Section of Environmental Analysis requiring UP to notify and consult with the National Geodetic Survey at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

On July 21, 2008, The Illinois Department of Natural Resources (IDNR) filed a request for the issuance of a 180-day public use condition under 49 U.S.C. 10905 and notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29.³ In the August 21 decision, the Board held the requests for issuance of a NITU and public use condition in abeyance pending completion of the OFA process. The Board concluded that IDNR had satisfied the requirements for both a public use condition and a NITU, but noted that, because an OFA takes priority over such requests, the OFA process had to be completed before public use and trail use conditions could be issued and become effective. The August 21 decision also indicated that, if the OFA process terminated without a sale, the Board would issue a decision and notice effective on its service date imposing interim trail use and a public use condition.

By letter filed on September 9, 2008, VSR states that it will not be filing an OFA to acquire and operate UP's rail line proposed for abandonment. Subsequently, on September 30, 2008, KJRY filed a motion to withdraw its notice of intent to file an OFA in this proceeding. Accordingly, the financial assistance process prescribed in the August 21 decision will be terminated. By letter filed on October 16, 2008, UP states that it is willing to negotiate with IDNR regarding trail use. Therefore, a NITU will now be issued and a public use condition will be imposed.

As conditioned, the abandonment authorized in this proceeding 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 financial assistance process in this proceeding is terminated.
3. Upon reconsideration, the notice served on July 23, 2008, and published in the Federal Register on July 28, 2008, exempting the abandonment of the line described above, is subject to the additional condition that UP shall keep intact the right-of-way, including bridges, trestles, culverts, and tunnels (except track, ties, and signal equipment) for a period of 180 days from the effective date of this decision and notice to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use, and is modified to the extent necessary to implement interim trail use/rail banking as set forth below, 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

³ In the August 21 decision, this pleading was incorrectly described as having been filed on July 8, 2008.

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.

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 right-of-way.

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 the 180th day after the service date of this decision and notice (May 12, 2009), interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.

8. UP's exemption will become effective on the service date of this decision and notice, subject to the trail use and public use conditions imposed herein, and the salvage condition imposed in the August 21 decision.

9. This decision and notice is effective on its service date.

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

Anne K. Quinlan
Acting Secretary