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SERVICE DATE – AUGUST 3, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1072X

IOWA RIVER RAILROAD, INC.—ABANDONMENT EXEMPTION—IN MARSHALL AND
HARDIN COUNTIES, IOWA

Digest:¹ This decision allows the Iowa River Railroad, Inc. (IRR) to end its responsibility to provide rail service over an approximately 34.35-mile rail line in Marshall and Hardin Counties, Iowa. It also requires IRR to keep certain railroad structures in place and sets a time period for it to negotiate with parties interested in turning the line into a recreational trail.

Decided: August 2, 2012

By petition filed on April 17, 2012, Iowa River Railroad, Inc. (IRR) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon an approximately 34.35-mile rail line between milepost 209.00 and milepost 243.35 (at or near Marshalltown, Iowa) in Marshall and Hardin Counties, Iowa (the Line). Notice of the petition was served and published in the Federal Register on May 7, 2012 (77 Fed. Reg. 26,825-26).

On May 16, 2012, as modified on July 11, 2012,² a request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) for the Line was filed on behalf of the Marshall and Hardin County Conservation Boards, the Cities of Marshalltown, Union, Steamboat Rock, Liscomb, Eldora, and Albion, and the Iowa Natural Heritage Foundation (collectively, trail sponsor). IRR responded, indicating that it agrees to negotiate with the trail sponsor for interim trail use/rail banking of the Line. The exemption will be granted subject to public use, trail use, environmental and standard employee protective conditions.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The trail sponsor originally requested that the public use condition prohibit IRR from disposing of the corridor's tracks, ties, and signal equipment. On July 11, 2012, the trail sponsor amended its request so as to permit IRR to salvage the corridor's track, ties, and signal equipment, while still barring the removal of trail-related structures.

BACKGROUND

According to IRR, the history of the Line begins in 1866, when the Eldora Railroad and Coal Company constructed a rail line from approximately one mile north of Eldora, Iowa, to Ackley, Iowa, to transport coal from the Coal Bank Hill area near Eldora to a connection at Ackley with the Dubuque & Sioux City Railroad (which later became the Illinois Central Railroad). The Line was extended between 1868 and 1870 both to the north, near Northwood, Iowa, and to the south, near Marshalltown, where it connected with the Chicago & North Western Railroad (CNW). IRR states that the Line went through several name changes during its early years and was ultimately named the Iowa Central Railroad (Iowa Central).

IRR states that the Line became part of an expanded north-south route between Minneapolis/St. Paul, Minn., and Kansas City, Mo. According to IRR, Iowa Central and the Minneapolis & St. Louis Railroad Company (M&StL) merged on January 1, 1912, with M&StL being the surviving carrier. On November 1, 1960, CNW purchased M&StL. Later, in 1983, CNW acquired a parallel line from the Chicago, Rock Island and Pacific Company and shortly thereafter rerouted its Minneapolis-Kansas City traffic over that parallel line, reducing the former M&StL main line to local service only. IRR states that CNW then abandoned much of the M&StL line, parts of which had been previously scrapped or rail banked. CNW was acquired by Union Pacific Railroad Corporation (UP) in 1995.

IRR states that it was organized on March 3, 2006, as an Iowa corporation by shippers whose facilities were located adjacent to the Line. According to IRR, Prairie Land Cooperative, United Suppliers, Inc., and PLCP³ were the shippers that formed and capitalized IRR. IRR submits that the goal of these shippers/owners was to preserve the option to transport goods by rail to and from their respective facilities and to operate a short line railway for rail service.

IRR purchased the Line on June 16, 2006.⁴ Flooding in 2008 caused substantial damage to IRR's track infrastructure, rendering IRR unable to provide rail operations for several months. IRR submits that it has been unable to recover financially from the maintenance and operating losses it has suffered, which also include a \$250,000 expenditure to repair the flood damage.⁵ On December 27, 2011, IRR embargoed the Line due to unsafe track conditions.

In the petition now before us, IRR states that it is seeking an exemption to abandon the Line because: (1) the operation of the Line is unprofitable and there is no reasonable prospect for future, profitable operations; (2) the Line's track and bridge structures require extensive

³ The petition does not further identify what PLCP is.

⁴ See Iowa River R.R.—Acquis. & Operating Exemption—Rail Lines of N. Cent. Ry. & Union Pac. R.R., FD 34877 (STB served July 5, 2006).

⁵ IRR states that, due to its capital calls and additional revenue needs arising from guarantees to IRR, IRR's shippers/owners were obligated to pay IRR \$539,820 during 2010 and \$518,545 during 2009. IRR submits that it would have been cashless and forced to file for bankruptcy had it not been for those additional payments.

rehabilitation, the cost of which would not be recoverable from operational net revenues; (3) continued operation of the Line would result in substantial opportunity costs; and (4) all shippers with facilities located adjacent to the Line have reasonable transportation alternatives.

According to IRR, only four shippers have received service during the past four years: United Supplies, Inc., located in Eldora, Iowa; Prairie Land Cooperative, located in Union, Iowa; Quality Products, also located in Eldora; and New Century Farm Service, located in Albion, Iowa. Carloads on the line totaled 185 in 2008, 193 in 2009, 199 in 2010, and 210 in 2011. Based upon actual usage of the Line during the years of 2008 through 2011, IRR submits that there is no evidence that future use of the Line will substantially increase. IRR points out that the total usage has varied by only a small percentage annually over the four-year period. IRR concludes that the Line's base traffic is insufficient to cover IRR's annual operating costs, much less cover needed track and right-of-way maintenance and repairs. IRR states that gross revenue from traffic handled on the Line was \$64,615 in 2009 and \$69,500 in 2010. IRR asserts that those revenues are far below what is needed to enable IRR to operate the Line at a profit in a forecast year.

IRR claims an average of \$206,100 in normalized maintenance costs per year, based on an average maintenance cost of \$6,000 per mile, which the Board in the past has accepted as a reasonable estimate.⁶ Netting those normalized maintenance costs against an estimated \$72,600 in revenue (based on an assumption of a 5% increase in car loadings), IRR asserts that it will incur an operating loss of \$133,500 during what it calls the forecast year.⁷ IRR claims that requiring it to bear such operating losses on a continuing basis would result in a serious, continuing, adverse effect on IRR and on IRR's ability to provide safe and efficient rail service.

IRR further states that the Line currently requires substantial rehabilitation, which would be a significant expense for the railroad, and claims that it has been unable to provide adequate track infrastructure and bridge maintenance. As a result, IRR states that there has been a substantial deterioration of the Line. IRR estimates the cost of repairing several bridges on the Line to be approximately \$166,000. Additionally, IRR states that replacement of track infrastructure is needed near milepost 215.0, north of Eldora, and at milepost 223.5, near Union, which would cost an estimated \$175,000. IRR estimates the cost to replace six defective crossties per 39-foot rail length at \$2,409,750, and further estimates that the Line requires ballast replacement totaling \$941,640. In all, IRR estimates that it would cost more than \$3.69 million to rehabilitate the track and bridges on the Line to achieve Federal Railroad Administration

⁶ See Miss. & Skuna Valley R.R.—Aban. Exemption—In Yalobusha & Calhoun Cntys., Miss., AB 1089X (STB served Jan. 20, 2012) (citing Consol. Rail Corp.—Aban.—Between Warsaw & Valparaiso, in Kosciusko, Marshall, Starke, La Porte & Porter Cntys., Ind., 9 I.C.C.2d 1299, 1304 (1993)).

⁷ Our rules applicable to abandonment applications define the “forecast year” as the 12-month period, beginning with the first day of the month in which the application is filed with the Board, for which future revenues and costs are estimated. See 49 C.F.R. § 1152.2(h). IRR has not defined what period of time constitutes its forecast year in this proceeding.

(FRA) Class I safety standards. In addition, IRR estimates that it will incur an opportunity cost of \$359,936 per year from continued operation of the Line.

IRR contends that the burden on IRR and on interstate commerce resulting from continued operation of the Line far outweighs the relatively minimal burden on shippers, if any, from the Line's abandonment. Further, IRR states that there are many reasonable transportation alternatives for all of the shippers. According to IRR, facilities for rail-to-truck transloading of plastic pellets for Quality Products, Inc. are located at Newton, Iowa, only 48 highway miles from Eldora. Additionally, IRR states that transloading of agricultural chemicals for United Suppliers, Inc. is currently being conducted at a facility located north of Steamboat Rock and south of Ackley, nine miles from Eldora. IRR also states that UP owns and operates a transcontinental east/west main line at Marshalltown, at the southern terminus of the Line. IRR further submits that UP's north/south "spine line" has major grain storage and loading facilities located at Garden City, Iowa, 12 miles from Prairie Land's grain facility located on the Line at Union, and at Buckeye, Iowa, 11 miles west of Steamboat Rock.

According to IRR, there is excellent highway access between various points on the Line via U.S. Highway 65 and State Highways 14, 175 and 215/118, and U.S. Interstate 35 is only between 20 and 25 miles from any point of the Line. IRR states that extensive trucking services and truck competition exist in the area. Therefore, IRR submits that any increase in freight charges upon abandonment of the Line as a result of a shipper's use of truck-rail or all-truck transportation will be modest and that the added expenses to the shippers is greatly outweighed by the serious harm to IRR and to interstate commerce resulting from continued operation of the Line. None of the shippers has filed objections to the abandonment.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without prior approval from the Board. 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.

As detailed below, IRR has demonstrated that the Line proposed for abandonment will incur an operating loss during the forecast year. It has also shown that the Line requires substantial maintenance-of-way (MOW)/rehabilitation expenditures and that it will incur significant opportunity costs if it continues to operate the Line. Accordingly, we find below that this transaction meets the exemption criteria under 49 U.S.C. § 10502, and we will grant IRR's petition for an exemption to abandon the Line.

Forecast Year Revenue. IRR estimates that, during its forecast year, revenues generated by the Line will total \$72,600.⁸ In calculating its revenue, IRR bases its estimates upon past

⁸ According to IRR, this cost assumes an increase of 5% in carloads.

usage of the Line. According to IRR, its total carloads for 2008, 2009, 2010, and 2011 were 185, 193, 199, and 210, respectively. IRR also states that, in 2009, gross revenues from traffic handled on the Line totaled \$64,615, and cites a gross revenue figure of \$69,500 for 2010.⁹ According to IRR, these figures represent an average of \$323 per car in 2009 and \$330 per car in 2010.¹⁰ IRR does not report revenue figures for 2008 or 2011, despite a reported 185 carloads and 210 carloads of traffic on the line in those years, respectively.

MOW/rehabilitation costs. IRR provides a brief analysis of the MOW/rehabilitation costs associated with the Line.¹¹ IRR provides no actual cost data but claims an annual normalized maintenance cost for the Line of \$206,100 during the forecast year based on an average of \$6,000 per mile per year, a figure the Board previously has accepted as a reasonable estimate. No party challenges the reasonableness of that figure here. Further, IRR claims that to rehabilitate the line to FRA Class I standards, it will need to make repairs and improvements totaling \$3,692,390, including \$2,409,750 in tie replacement costs, \$166,000 in bridge rehabilitation, \$941,640 in ballast, and \$175,000 in track repairs. Although IRR provides limited supporting evidence regarding its track and rehabilitation costs, and we believe that its figure of \$3,692,390 might be slightly inflated due to evidence of continued use of the Line after the 2008 flooding, we will accept IRR's estimated MOW/rehabilitation costs for the forecast year as the best evidence of record.

Forecast Year Loss. Despite the deficiencies in the evidence submitted by IRR, the record as it stands before us indicates that IRR would incur substantial losses in the forecast year. Assuming 221 carloads in the forecast year (an increase of approximately 5% over 2011), and using the most recent figure available for average revenue per carload (approximately \$349 per car in 2010), results in total revenues of approximately \$77,129 in the forecast year. Netting those revenues against IRR's claimed \$206,100 in normalized maintenance costs per year results in a forecast year loss of \$128,971, close to IRR's estimated figure of \$133,500. This estimated amount is based upon reasonable facts and assumptions and is the best evidence of record. No party has come forward to dispute IRR's claim of significant operating losses or oppose the abandonment.

Opportunity costs. Opportunity costs (or total return on value of road property) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. Here, IRR has asserted opportunity costs of \$359,936 during the forecast year, calculated by multiplying an estimated net liquidation value of the Line of \$3,263,250 (an estimated

⁹ The nature of this revenue is not clear, as the \$64,615 in revenues reported for 2009 is described as "gross revenues for traffic handled on the line," while the \$69,500 in revenue for the following year is described as "[t]otal gross revenues for the year 2010 from the non-owner shippers" on the Line. Pet. at 5.

¹⁰ The correct figures appear to be \$335 and \$349, respectively.

¹¹ In estimating the costs associated with the Line, IRR does not seek to include or quantify the operating costs for its train crews, locomotives and freight cars but asserts, nevertheless, that they are "substantial" and would increase the Line's forecast year loss.

\$95,000 per mile times 34.35 miles) by 11.03%, the most recent composite railroad industry cost of capital figure published by the Board.¹² No party has challenged IRR's opportunity cost figure, so we will accept it as the best evidence of record.¹³

Because of IRR's estimated forecast year loss, including the substantial MOW/rehabilitation costs and opportunity costs, all of which are uncontested, we find that the rail transportation policy objectives of 49 U.S.C. § 10101 are met without subjecting this transaction to the more detailed scrutiny required under 49 U.S.C. § 10903. By minimizing the administrative expense of the application process, an exemption in this case will expedite regulatory action and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). An exemption will also foster sound economic conditions and encourage efficient management by allowing IRR to save the expenses of maintaining and operating a Line that is unprofitable. See 49 U.S.C. §§ 10101(5) and (9). Other aspects of the rail transportation policy will not be adversely affected by use of the exemption process.

More detailed scrutiny of the proposed abandonment of the Line is not necessary to protect shippers from an abuse of market power.¹⁴ As IRR asserts, total usage of the Line has varied by only a small percentage annually over the four-year period of 2008 to 2011, and none of the shippers has objected to the abandonment exemption. Further, the record shows that these shippers have other transportation alternatives. Nevertheless, to ensure that the shippers have been informed of the Board's action, IRR will be required to serve a copy of this decision on the four shippers so that it is received within five days of the service date of this decision and notice, and to certify contemporaneously to the Board that it has done so.

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its 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, the Board will impose the employee protective conditions set forth in Oregon Short Line—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979) (Oregon Short Line).

Environmental Review. IRR has submitted a combined environmental and historic report and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. § 1105.11. The Board's Office of Environmental Analysis (OEA) has examined the

¹² See Railroad Cost of Capital—2010, EP 558 (Sub-No. 14), slip op. at 12 (STB served Oct. 3, 2011).

¹³ Although the Board's regulations provide that opportunity costs are to be calculated based on a pre-tax cost of capital rather than the after-tax cost of capital published by the Board, see 49 C.F.R. § 1152.34(d), doing so would increase IRR's claimed opportunity costs in any event and thus would not alter our conclusion that granting the abandonment exemption is warranted.

¹⁴ Given the market power finding here, the Board need not determine whether the proposed transaction is limited in scope.

environmental and historical report, verified IRR's data, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA issued an Environmental Assessment (EA) in this proceeding on June 15, 2012, recommending that two conditions be imposed on any decision granting abandonment authority.

In the EA, OEA states that the Army Corps of Engineers, Rock Island District (Corps), has indicated that the abandonment, as proposed, would not require a Department of Army Section 404 permit. However, according to OEA, the Corps has requested that IRR contact the following project leaders and agencies to determine if the proposed abandonment could impact specific projects currently underway: Marshalltown Local Flood Protect Project (Sarah Jones, (309) 794-5206), Federal Emergency Management Agency ((816) 283-7061), and Iowa Emergency Management Division (regarding impact areas designated as floodways) (John Wagman, (515) 725-3231). Thus, OEA recommends a condition that IRR contact the resources suggested by the Corps prior to conducting salvage activities on the Line.

OEA states in the EA that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be located in the area of the proposed abandonment. Therefore, OEA recommends that IRR be required to consult with NGS at least 90 days before beginning any salvage activities that would disturb or destroy any geodetic station markers.

Also in the EA, OEA states that the State of Iowa, Department of Natural Resources (IADNR), has commented that it has searched its records of rare species and significant natural communities and found no site-specific records that would be impacted by the proposed abandonment. According to OEA, however, IADNR has indicated that storm water discharge and fugitive dust permits may be required from its office. In the final EA dated July 16, 2012, OEA recommends, for the sake of clarity, one additional condition that IRR consult with IADNR prior to initiating salvage activities on the Line.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the project area. According to OEA, the Database indicated that there are six tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the proposed abandonment. OEA sent a copy of the EA to these tribes for review and comment.¹⁵

Comments to the EA were due by July 13, 2012. No comments were received. Based on OEA's recommendations, the Board concludes that the proposed abandonment, if implemented

¹⁵ The Database is at: <http://home.nps.gov/nacd/>. The identified tribes are the Lower Sioux Indian Community in the State of Minnesota; the Prairie Island Indian Community in the State of Minnesota; the Sac and Fox Nation of Missouri in Kansas and Nebraska; the Sac and Fox Nation, Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; and the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota.

as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Interim Trail Use.

As indicated above, the trail sponsor has filed a request for the issuance of a NITU for the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29 to provide time to negotiate with IRR for acquisition of the right-of-way for use as a recreational trail and for rail banking. The trail sponsor has submitted a statement of willingness to assume full responsibility for the management of the right-of-way, for any legal liability arising out of the transfer or use of the right-of-way, 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. The trail sponsor has also acknowledged that the use of the right-of-way for trail purposes is subject to the sponsor's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on July 13, 2012, IRR states that it agrees to negotiate for an interim trail use/rail banking agreement with the trail sponsor.

Because the trail sponsor's request complies with the requirements of 49 C.F.R. § 1152.29 and IRR is willing to enter into interim trail use negotiations, we will issue a NITU for the Line. The parties may negotiate an agreement during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within ten days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012) (effective May 30, 2012). If no agreement is reached within 180 days, IRR may fully abandon the Line, subject to the conditions imposed below. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Public use.

The Board has determined that persons who request a NITU under the Trails Act may also seek a public use condition under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Rail Abans.). When the requirements for both conditions are met, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. The trail sponsor has met the public use criteria prescribed at 49 C.F.R. § 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) the justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the Line, commencing 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. If a trail use agreement is reached on a portion of the right-of-way, IRR must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to negotiate to acquire a right-of-way that has been found suitable for public purposes,

including trail use. Therefore, with respect to the public use condition, IRR is not required to deal exclusively with the trail sponsor, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. § 10904. As stated in Rail Abans., 2 I.C.C.2d at 608, an offer of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations takes priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 C.F.R. § 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 C.F.R. § 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 C.F.R. § 1152.27(f). Finally, if the Line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes 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 by IRR of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line and the conditions that IRR shall: (1) be prohibited from disposing of the corridor (other than tracks, ties, and signal equipment) and from removing or destroying potential trail-related structures (such as bridges, trestles, culverts, and tunnels) for a 180-day period from the effective date of this decision and notice to enable any state or local government agencies, or other interested person, to negotiate the acquisition of the Line for public use; (2) comply with the interim trail use/rail banking procedures set forth below; (3) contact the Marshalltown Local Flood Protect Project (Sarah Jones, (309) 794-5206), the Federal Emergency Management Agency ((816) 283-7061), and the Iowa Emergency Management Division (John Wagman, (515) 725-3231), regarding potential impacts to flood control projects in the area of the proposed abandonment; IRR shall report the results of these consultations in writing to OEA prior to any salvage activities; (4) consult with NGS at least 90 days prior to the beginning of salvage activities that will disturb or destroy any geodetic station markers; and (5) consult with IADNR regarding the need to obtain storm water discharge and fugitive dust emission permits prior to initiating salvage activities on the Line.

2. IRR is directed to serve a copy of this decision on United Supplies, Inc., Prairie Land Cooperative, Quality Products, and New Century Farm Service so that it is received within five days of the service date of this decision and notice, and to certify contemporaneously to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) 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 possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities described in ordering paragraph 3 above.

5. If an agreement for interim trail use/rail banking is reached by January 30, 2013, the parties shall jointly notify the Board within ten days that an agreement has been reached, 49 C.F.R. § 1152.29(d)(2) and (h), and interim trail use may be implemented. If no agreement is reached by that time, IRR may fully abandon the Line, provided the conditions imposed above are met. See 49 C.F.R. § 1152.29(d)(1). If an interim trail use/rail banking agreement is executed before January 30, 2013, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the Line.

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the rail line covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. An OFA under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 13, 2012, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee of \$1,500. See 49 C.F.R. § 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 2, 2012. Petitions to stay must be filed by August 20, 2012. Petitions to reopen must be filed by August 28, 2012.

10. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), IRR 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 IRR's filing of a notice of consummation by August 3, 2013, 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 no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.