

39170
DO

SERVICE DATE – JULY 29, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE

STB Docket No. AB-33 (Sub-No. 251X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN DANE COUNTY, WI

Decided: July 28, 2008

Union Pacific Railroad Company (UP) and Wisconsin & Southern Railroad Company (WSOR) jointly filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for UP to abandon and WSOR to discontinue service over a 4.4-mile line of railroad, known as the Central Soya Line, Harvard Subdivision, between milepost 85.5 in the City of Madison and milepost 89.9 in the City of Fitchburg, in Dane County, WI. Notice of the exemption was served and published in the Federal Register on May 2, 2005 (70 FR 22758).

By decision and notice of interim trail use or abandonment (NITU) served on May 31, 2005, the proceeding was reopened and a 180-day period was authorized for Wisconsin Department of Natural Resources to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ The negotiating period under the NITU was extended several times; the latest decision, served on May 28, 2008, extended the negotiating period until November 12, 2008.

By letter filed on June 24, 2008 (as supplemented on July 9, 2008), WisDOT, on behalf of City of Madison (City), requested substitution of the City as the party that will negotiate for, and be responsible for, interim trail use. The City submitted the required statement of willingness to assume financial responsibility for interim trail use and rail banking pursuant to the Trails Act with respect to the 4.4-mile rail line.² The City acknowledged that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service and that the City is willing to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for the payment of any taxes or

¹ The May 31, 2005 decision and notice also made the exemption subject to several environmental conditions.

² In its June 24, 2008 filing, WisDOT stated that an agreement was expected within two months.

assessments that thereafter may be lawfully levied against, the property it acquires from UP. On July 15, 2008, UP replied stating that it concurs with WisDOT's request to substitute the City as the new trail user.

WisDOT's request for a NITU meets the requirement of 49 CFR 1152.29(a) and will be granted. Accordingly, this proceeding will be reopened and the existing NITU vacated and replaced with a NITU issued to the City. No extension of the negotiating period beyond November 12, 2008, has been sought or appears necessary at this time.

This decision 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 NITU served May 31, 2005, is vacated.
3. A replacement NITU applicable to the City as interim trail user is issued for a period extending from the service date of this decision and notice until November 12, 2008, subject to the environmental conditions that remain in effect.
4. The new trail user is required 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 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 new user's continuing to meet the financial obligations for the right-of-way.
6. If a new trail 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 specific date.
7. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary