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SERVICE DATE – LATE RELEASE JUNE 1, 2005

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 225X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN CERRO  
GORDO COUNTY, IA

Decided: May 31, 2005

By petition filed on February 11, 2005, Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad, known as the Thornton Industrial Lead, from milepost 2.0 near Flint, IA, to milepost 17.14 near Thornton, IA, a distance of 15.14 miles, in Cerro Gordo County, IA. Notice of the filing was served and published in the Federal Register on March 3, 2005 (70 FR 10477). Iowa Trails Council (Iowa Trails) filed a request for issuance of a notice of interim trail use (NITU). We will grant the petition for exemption, subject to trail use, environmental, and standard employee protective conditions.

BACKGROUND

There is currently one shipper on the line, North Iowa Coop (NIC). NIC shipped 64 rail cars of various commodities over the line in 2003 and 6 cars in 2004. According to UP, the proposed abandonment will not adversely affect NIC, as it is no longer using rail service and will use trucks in the future at its two stations on the line. UP adds that the shipper has informed UP that it will not oppose this abandonment. UP further states that, due to a string of washouts between Burchinal and Swaledale caused by heavy Spring rains in 2004, the portion of the line south of Burchinal, including the stations of Swaledale and Thornton, are out of service and have been embargoed. UP estimates that it would cost approximately \$80,000 to \$100,000 to repair the line south of Burchinal.

According to petitioner there is no overhead traffic on the line and no practicable possibility for substantial new rail business. UP indicates that, upon abandonment, the closest rail service would be available at Flint, IA, adjacent to the north end of the line, which is served by UP, the Iowa, Chicago and Eastern Railroad, the Dakota, Minnesota & Eastern Railroad, and the Iowa Traction Railroad. UP adds that the existing stations at Burchinal, Swaledale, and Thornton lie on local roads that each make a direct connection to Interstate Highway 35, a major north-south route within 5 miles and that U.S. Highway 18, the major east-west route in the area, lies approximately 5 miles north of Burchinal.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. 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.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by allowing UP to avoid the cost of owning and maintaining a line that is not in use and allowing it to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because NIC, the sole shipper on the line, has stated that it no longer intends to use the line as it has made other transportation plans, and it does not oppose the abandonment. Nevertheless, to ensure that NIC is informed of our action, we will require UP to serve a copy of this decision on NIC within 5 days of the service date of this decision and notice and certify to the Board that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

UP has submitted environmental and historic reports with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on April 12, 2005, and requested comments by May 11, 2005.

In the EA, SEA states that the U.S. Army Corps of Engineers—Rock Island District (USCOE) concluded that the proposed abandonment would not involve the discharge of fill material in waters of the United States. Therefore, a USCOE permit under section 404 of the Clean Water Act (33 U.S.C. 1344) would not be required. However, because the railroad intends to remove the bridges on the line, USCOE stated that the railroad should remove all fill material

to an upland, non-wetland site and remove all pilings to at least one foot below stream bed elevations. USCOE also stated that UP should seed all disturbed areas with native grasses and implement appropriate measures to insure that sediments are not introduced into the waters of the United States during the proposed project. SEA recommends a condition to that effect.

SEA also states that the U.S. Fish and Wildlife Service–Rock Island Field Office (USFWS) stated that the following federally threatened species may be present in the vicinity of the proposed abandonment: the bald eagle (Haliaeetus leucocephalus), the prairie bush-clover (Lespedeza leptostachya), and the western prairie fringed orchid (Platanthera praeclara). In particular, USFWS expressed concern regarding the possibility of prairie remnants in the project area, because this is the habitat for prairie bush clover and the western prairie fringed orchid. Because of potential presence of federally threatened species, SEA recommends that the railroad consult with USFWS (Ms. Kristen Lundh at 309-793-5800 ext. 215) prior to commencement of salvage activities. The purpose of these consultations will be to determine whether prairie habitat is found in the project area and to evaluate the proposed abandonment’s potential impacts to the three species. According to SEA, if necessary, USFWS and the railroad will develop mitigation measures to minimize potential adverse impacts. SEA also recommends that the railroad report the results of these consultations in writing to SEA prior to commencement of any salvage activities.

SEA further states that the Natural Resources Conservation Service (NRCS) has recommended an evaluation of the potential effects that removal of the rail line and rail bed would have on the adjoining agricultural drainage systems. To address this concern, SEA recommends that UP consult with NRCS (Mr. Tony Moore at 641-424-4452) regarding possible mitigation measures and report the results in writing to SEA prior to commencement of any salvage activities.

Finally, UP has submitted a historic report and has served the report on the State Historical Society of Iowa (the State Historic Preservation Office or SHPO). See 49 CFR 1105.8. SEA states in the EA that the SHPO has not yet completed its evaluation of the potential impact of the proposed abandonment. Therefore, SEA recommends in the EA that, pending completion of the SHPO’s review, a condition be imposed requiring UP to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

No comments to the EA were received by the due date. Accordingly, we will impose the conditions recommended by SEA in the EA. Based on SEA’s recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in the EA that the right-of-way may be appropriate for other public use under 49 U.S.C. 10905. No one has sought a public use condition, however, and none will be imposed.<sup>1</sup>

As previously noted, Iowa Trails has filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d). Iowa Trails has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service, as required under 49 CFR 1152.29. UP states that it is willing to negotiate with Iowa Trails for interim trail use. Because Iowa Trails's request complies with the requirements of 49 CFR 1152.29, and UP is willing to enter into interim trail use negotiations, we will issue a NITU authorizing the parties to negotiate an agreement for interim trail use/rail banking during the 180-day period prescribed below. If the parties reach an agreement, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986), offers 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. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2), (f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and interim trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, the interim trail use process may proceed.

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

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<sup>1</sup> Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by March 23, 2005.

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 UP of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that UP shall: (1) comply with the terms and conditions for implementing interim trail use/rail banking, as set forth below; (2) (a) remove all fill material to an upland, non-wetland site and remove all pilings to at least one foot below stream bed elevations, and (b) seed all disturbed areas with native grasses and implement appropriate measures to insure that sediments are not introduced into the waters of the United States during the proposed project; (3) prior to commencement of any salvage activities, consult with USFWS (Ms. Kristen Lundh at 309-793-5800 ext. 215) to determine whether prairie habitat is found in the project area, evaluate possible impacts to the three federally threatened species that may be present in the vicinity, and develop appropriate mitigation measures, if necessary, and report the results of these consultations to SEA in writing prior to commencement of any salvage activities; (4) consult with NRCS (Mr. Tony Moore at 641-424-4452) regarding the proposed abandonment's potential effects on the adjoining agricultural drainage systems and possible mitigation measures, and report the results of these consultations in writing to SEA prior to commencement of any salvage activities; and (5) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the NHPA.

2. UP is directed to serve a copy of this decision and notice on NIC within 5 days after the service date and to certify to the Board that it has done so.

3. 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, 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.

4. 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.

5. 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.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by June 13, 2005, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,200. See 49 CFR 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 July 1, 2005. Petitions to stay must be filed by June 16, 2005, and petitions to reopen must be filed by June 27, 2005.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP 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 UP’s filing of a notice of consummation by June 1, 2006, 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 Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary