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SERVICE DATE – JUNE 17, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 261)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—IN NEW MADRID, SCOTT, AND STODDARD COUNTIES, MO

Decided: June 15, 2009

On February 27, 2009, Union Pacific Railroad Company (UP) filed with the Board an application for permission to abandon its Essex to Miner Line, extending from milepost 196.7, near Essex, to milepost 216.27, near Miner, a distance of 19.57 miles, in New Madrid, Scott, and Stoddard Counties, MO (the Line).[1] Notice of the filing was served and published in the Federal Register (74 FR 11809) on March 19, 2009. Protests were timely filed by Steward Steel, Inc. (Steward), on March 27, 2009, and Tetra Pak, Inc. (Tetra Pak), on April 13, 2009. The Missouri Department of Transportation (MoDOT) also filed comments, on April 12, 2009. The Brotherhood of Locomotive Engineers and Trainmen (BLET) late-filed a protest on April 21, 2009. UP filed a rebuttal to the protests of Steward, Tetra Pak, and BLET. On April 13, 2009, the City of Sikeston, MO (Sikeston or the City), filed a request for imposition of a public use condition and for issuance of a certificate of interim trail use (CITU). We will grant the request for abandonment authority, subject to environmental, trail use, public use, and standard employee protective conditions. In addition, if the state, community, or any other interested person wishes to continue rail service on the Line, the offer of financial assistance (OFA) process is available to it.

BACKGROUND

The Line was originally constructed in 1873 by the Cairo, Arkansas & Texas Railroad. According to UP, there are 18 bridges on the Line that are 50 years of age or older. The bridges are mostly constructed of timber pile trestles. UP states that there are approximately 40 railroad-roadway at-grade crossings on the Line.

There are currently four shippers on the Line: Tetra Pak; Steward; Cargill Ag Horizons; and River Bend Ag. There were 236 total railcar movements for these four shippers in 2007, and in 2008 there were 200 railcar movements. There is no overhead or bridge traffic on the Line.

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[1] In addition to the 19.57 miles of branch line, the Line includes approximately 4.4 miles of sidings and industrial track.

TRAFFIC, OPERATIONS, AND REVENUES

UP expects that only two of the shippers, Tetra Pak and Steward, would use the Line during the forecast year (February 1, 2009, through January 31, 2010). UP estimates that it would move 246 railcars for those shippers in the forecast year.

Tetra Pak operates a food packaging materials manufacturing facility in Sikeston, which receives bulk shipments of pulpboard in boxcars from Pine Bluff, AR. The facility is located at milepost 213.74. Tetra Pak ships its finished products via truck to food production facilities throughout the United States. UP states that all Tetra Pak traffic consists of commodities that are currently exempted from Board regulation pursuant to 49 U.S.C. 10502. See 49 CFR 1039.11.

Steward operates a structural steel products manufacturing facility in Miner that receives inbound loads of steel billets and ships outbound loads of steel bars. The facility is located at milepost 216.27. Its inbound traffic originates at Newport, AR, while its outbound traffic travels to Cherry Point, WA. UP states that all Steward traffic consists of commodities that are currently exempted from Board regulation pursuant to 49 U.S.C. 10502. See 49 CFR 1039.11.

UP provides revenue and cost data for a base year (October 1, 2007–September 30, 2008) and the forecast year.[2] In the base year, UP shipped 269 carloads of traffic, generated total revenues of $743,828, and realized a loss of $184,383 (revenues minus avoidable costs, as discussed below). In the forecast year, UP calculates that it would ship 246 carloads, generate total revenues of $663,804 this figure includes $42,416 of all other revenue and income, and realize a loss of $298,067 (this loss includes the avoidable losses and the total return on value). UP also provides data for a subsidy year, as defined in 49 CFR 1152.2(m)[3] (here, February 1, 2009–January 31, 2010). Because UP's forecast year and subsidy year are the same, the revenues and losses for the subsidy year are identical to those for the forecast year. When subsidization costs are added to the forecast-year loss, the result is an estimated subsidy payment of $520,213.[4]

The Board's Office of Economics (OE) has reviewed UP's abandonment application. OE found that generally the work papers are well-sourced, detailed, and in compliance with the requirements presented in 49 CFR 1152.31 through 1152.36. None of the protestants has

[2] See attached appendix for details.

[3] Any 12-month period for which a subsidy agreement for continued rail service has been negotiated and is in operation.

[4] The subsidy payment is the amount needed for projected revenues to equal projected costs in a 12-month period so that rail service could continue.

challenged UP's estimates or calculations. Therefore, we will accept the applicant's figures in support of the application, which are more fully explained below.[5]

AVOIDABLE COSTS

Avoidable costs are costs that the applicant would cease to incur if it abandons and discontinues service over the Essex-to-Miner Line. As already indicated, UP has submitted data showing avoidable on-branch costs[6] for the base, forecast, and subsidy years. Avoidable costs can include: maintenance-of-way and structures; maintenance of equipment–locomotives; transportation; deadheading–taxi and hotel; overhead movement; freight car costs (other than return); return on value–locomotives; return on value–freight cars; revenue taxes; and property taxes. UP reports total avoidable on-branch costs of $519,312 for the base year, and $515,389 for the forecast and subsidy year. In addition, it reports total avoidable off-branch costs[7] of $408,899 for the base year, and $301,648 for the forecast and subsidy year. Total avoidable costs are $928,211 for the base year, and $817,037 for the forecast and subsidy year.[8]

LINE CONDITION AND REHABILITATION

According to UP, the Line requires $215,508 to rehabilitate deteriorated grade crossing surfaces on the Essex-to- Miner Line. None of the protestants has contested UP's estimates of the cost of rehabilitating the Line. UP has submitted the only evidence of record and fulfilled the requirements set forth in 49 CFR 1152.22 by describing the condition of the properties and its estimate of required rehabilitation costs. Therefore, we accept UP's estimate of rehabilitation costs.

OPPORTUNITY COSTS

Opportunity costs reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. Under Abandonment Regulations–Costing, 3 I.C.C.2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of: (1) allowable working capital; (2) the net liquidation value (NLV) of the line; and (3) current income tax benefits (if any) resulting from abandonment. The investment base (or valuation of the road properties) is multiplied by the current nominal rate of return, to

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[5] Although all the values were found reasonable, we did find minor differences due to rounding and miscalculations. These differences are insignificant to the outcome of our decision and were not contested by other parties; therefore no changes have been made to the numbers provided by UP in the appendix.

[6] On-branch costs are directly attributable to the line being abandoned.

[7] Off-branch costs account for the handling of traffic that moved over the line being abandoned on other portions of UP's system.

[8] See appendix.

yield the nominal return on value.[9] Under 49 CFR 1152.34(d), the rate of return used to calculate return on value represents the individual railroad's current pre-tax nominal cost of capital. Our most recent after-tax cost of capital finding for the railroad industry is used as a basis for developing the appropriate nominal rate of return. The nominal return is then adjusted by applying a holding gain (or loss) to reflect the increase (or decrease) in value a carrier will expect to realize by holding assets for an additional year.

UP estimates that, for the subsidy/forecast year, the NLV for the Line (including track, other materials, and associated real estate) will be $2,104,986. None of the protestants has challenged this estimate. We accept UP's estimates of track assets and land as they do not appear unreasonable and are the only evidence of record. UP's estimates of the working capital and income tax consequences are also unchallenged by the protestants and appear reasonable. These figures will therefore also be accepted.

Based on the sum estimate for these items (working capital, income tax consequences, and NLV) of $1,346,813, and a 17.2% rate of return,[10] UP projects that the nominal return on value from its property over the forecast/subsidy year will be $232,191. Subtracting UP's estimated holding gain of $87,357, the Line will have a subsidy/forecast year total return on value of $144,834.

SUMMARY OF COST AND REVENUE EVIDENCE

Based on the above analysis as set out in the appendix, the cost and revenue evidence shows that, for the forecast year, total revenue attributable to the Line is $663,804. Total avoidable costs of $817,037 result in a forecast/subsidy year operating loss of $153,233. When the total return on value is considered, the forecast/subsidy year loss from operations is $298,067. When subsidization costs are included, UP would require an estimated subsidy year payment of $520,213.

ALTERNATIVE TRANSPORTATION

If the Line is abandoned, the closest rail lines to the shippers will be the remaining portion of UP's Sikeston Subdivision at Essex and the main line of BNSF Railway Company (BNSF), which crosses the Line at milepost 211.1. Additionally, motor carrier transportation is available in the region to serve the shippers on the Line. UP states that U.S. Highway 60, a four-lane divided thoroughfare, parallels the Line, and is situated within approximately 1 mile of it at all points. State Highway 114 runs directly alongside the Line for most of the distance from Essex to Sikeston, while U.S. Highway 62 runs next to the Line from Sikeston to Miner.

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[9] In UP's application, the opportunity costs are computed in the same manner as the nominal return on value.

[10] The rate of return is based on the Board-developed, industry-wide pre-tax cost-of-capital.

Interstate 55 crosses the Line in Miner, which in turn connects with Interstate 57 and Highway 60 approximately 1 mile to the south of the Line. UP states that joint barge/truck service may also be a viable transportation alternative.

UP estimates that approximately 1,922 additional trucks (loaded and empty) would need to move across local roads and highways annually to replace the projected rail traffic on the Essex-to-Miner Line. This would be approximately eight additional one-way truck movements per business day moving and dispersing across the local road and highway network.

SHIPPER AND COMMUNITY INTERESTS

As previously noted, two shippers, Steward and Tetra Pak, have submitted statements in opposition to the application. The shippers detail the adverse effects they anticipate experiencing in the event of a loss of direct rail service. MoDOT and BLET also filed comments to the proceeding. Although BLET's comments were received after the filing deadline, we will consider the filing to allow a more complete record and because UP was able to address BLET's comments.

Steward, as a significant user of the Line that believes it will be adversely affected, urges the Board to deny the application. Steward claims that shipping by alternative methods will add cost to its production, which could result in the "loss of an entire contract." Steward does not contest UP's supporting evidence for abandonment.

UP responds that it believes the abandonment will have little if any impact on Steward. UP argues that Steward's forecast year rail traffic volume is approximately one fifth the level generated by Tetra Pak and that this level is likely to decline.

Like Steward, Tetra Pak does not contest UP's supporting evidence for abandonment, but claims that it will incur "several hundred thousand dollars" of additional costs per year by replacing rail deliveries with 100% truck deliveries. Additionally, Tetra Pak argues that it will incur significant costs to modify its facilities to handle additional inbound truck traffic.

UP argues that Tetra Pak provides no evidence to support its claims of increased costs and argues that a switch from rail to motor carrier service will not impose a significant burden upon Tetra Pak. UP argues that all Tetra Pak rail traffic travels a distance of 280 miles and that motor carriers generally provide a competitive alternative to rail transport in similar short-haul markets. Indeed, UP asserts that truck competition is so prevalent that it has limited UP's ability to raise prices to a level required to operate the Line profitably. UP also questions the extent to which Tetra Pak will need to modify its facilities, as Tetra Pak already receives inbound truck traffic from other locations.

BLET, the duly designated and recognized collective bargaining representative for the craft or class of locomotive engineer employed on UP, opposes the application, alleging that abandonment of the Line is not in the public interest. BLET raises the possibility of future industry utilizing the Line. BLET supports Steward's and Tetra Pak's assertions that abandonment would substantially harm the shippers and disagrees with UP's premise that the Line should be self-sufficient as to capital and operating costs. BLET also claims that the track has been used to detour traffic when other lines are out of service and to abandon the Line would eliminate this option.

UP responds that BLET has offered no evidence to support its claims and argues that other rail and motor carrier operators in the area will provide suitable transportation alternatives. Regarding the use of the Line for detours, UP argues that the Essex-to-Miner Line is not a through route and that its prior attempts to acquire an additional rail line to facilitate through traffic was met with such strong opposition from the local community that it gave up that plan.

MoDOT argues that service to Tetra Pak and Steward can be maintained while still abandoning the majority of the Line. MoDOT notes that the two businesses, located at mileposts 213.74 and 216.27, could be serviced if a switch or turnout were constructed to allow access off of the BNSF line that intersects the Line at milepost 211.1.[11] MoDOT suggests giving BNSF access for 3 miles in both directions to serve the two shippers and possible future shippers while allowing the rest of the Line to be abandoned. MoDOT also makes specific requests regarding salvage and the reuse of signals should the abandonment authority be granted.

UP responds that it is actively working with Tetra Pak to explore options for preserving rail service following abandonment authorization. UP states that Tetra Pak has indicated an interest in submitting an OFA and that UP has already provided Tetra Pak with NLV estimates for various segments of the Line. UP states that, if Tetra Pak or any other person files a formal OFA, UP will work actively and in good faith to reach an agreement that would permit continued rail service on the Line.

DISCUSSION AND CONCLUSIONS

The statutory standard governing an application to abandon or discontinue service over a rail line is whether the present or future public convenience and necessity permit the proposed abandonment or discontinuance of service. 49 U.S.C. 10903(d). In implementing this standard, we must balance the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. Colorado v. United States, 271 U.S. 153 (1926).

The Board must determine whether the burden on the railroad from continued operation is outweighed by the burden on the shippers and public parties from the loss of rail service. This involves a question of whether, and to what degree, shippers will be harmed if rail service is no longer available. The fact that shippers are likely to incur some harm and added expense is not

[11] MoDOT states that the BNSF line intersects the Essex-to-Miner Line at approximately milepost 212. In its application, UP states that the BNSF line crossing is at milepost 211.1.

sufficient in and of itself to defeat an application for abandonment. Protestants must show that the harm to shippers and communities outweighs the demonstrated harm to the railroad and interstate commerce resulting from continued operation. See Chicago and North Western Transp. Co.–Abandonment, 354 I.C.C. 1, 7 (1977).

In determining whether to grant or deny an abandonment or discontinuance application, we consider a number of factors, including operating profit or loss, other costs the carrier may experience (including rehabilitation and economic costs), and the effects on shippers and communities. No one factor is conclusive. See Cartersville Elevator, Inc. v. ICC, 724 F.2d 668, aff'd on reh'g en banc, 735 F.2d 1059 (8th Cir. 1984).

UP has established that continued operation of the Line would be burdensome. Its projection of 246 carloads in the forecast year is consistent with recent traffic and has not been refuted by protestants' evidence. As stated above, the Essex-to-Miner Line would realize a subsidy year loss from operations of $153,233, and subsidization costs for the Line and return on value calculations result in a subsidy requirement of $520,213.[12]

Shippers have claimed that the loss of rail service will adversely affect their businesses. Steward claims that shipping by alternative methods will be more expensive and could result in the "loss of an entire contract," but does not quantify that alleged loss or provide any evidence to support it. Tetra Pak argues that shipping by motor carrier will increase its costs by "several hundred thousand dollars per year," and require it to modify its facilities to handle more truck traffic, but similarly does not attempt to further quantify the alleged increased costs or support its allegations with documented evidence.

The demonstrated burden that continued operation of the Line would impose on UP and on interstate commerce outweighs the alleged burden that abandonment would impose on shippers and the community. Based on the record, it appears that motor carrier service is available to the shippers on the Line. Although the cost of motor carrier service to Tetra Pak and Steward may be greater than the cost of rail service provided by UP, UP has demonstrated that rail service cannot be provided except at a substantial loss. BLET is correct that the Line need not be self-sufficient as to capital and operating costs in order for the Board to deny the application. However, there is no reason provided here why this cost should be borne by UP rather than the shippers that use this transportation service. See Boston and Maine Corporation—Abandonment—in Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 83), et al. (STB served Apr. 22, 1998). Railroads are not required to operate an unprofitable line simply to prevent existing shippers from incurring higher transportation costs by truck. See Central Oregon & Pacific Railroads, Inc.—Abandonment and Discontinuance of Service—in Coos, Douglas, and Lane Counties, OR, STB Docket No. AB-515 (Sub-No. 2), slip op. at 9 (STB served Oct. 31, 2008); CSX Transportation, Inc.—Abandonment Exemption—in Harrison County, WV, STB Docket No. AB-55 (Sub-No. 563X),

[12] See appendix.

slip op. at 3 (STB served Sept. 25, 1998). Departing from this longstanding policy would discourage needed private investment in railroads.

BLET argues that the loss of future business development on the Line warrants the denial of UP's application. However, the loss of speculative future economic development arising from abandonment does not outweigh demonstrated harm to the carrier resulting from continued operation of a line. See San Joaquin Valley Railroad Company—Abandonment Exemption—in Tulare County, CA, STB Docket No. AB-398 (Sub-No. 7X), slip op. at 9 (STB served June 6, 2008).

BLET also argues that the Line is used as a detour when other area lines are out of service. However, the viability of the Line as a detour for other lines is unclear from the record in this proceeding. UP argues that it cannot provide a detour route solely on its own system. UP claims it had attempted to acquire an additional line that, together with the Line, could provide through service but stopped this plan when it was confronted with considerable resistance from the local community.

The harm caused by the proposed abandonment to the shippers and local community is outweighed by the burden of requiring UP to continue service on this uneconomic line. Therefore, the abandonment application will be granted.

We will not condition the abandonment as MoDOT has requested regarding the transfer of lights and gates signals and the salvage of a gated crossing. MoDOT may negotiate an agreement with UP regarding these items, but the conditions sought are not appropriate. MoDOT has also suggested an alternative to abandonment in which a portion of the line can be preserved to serve current and future shippers while abandoning the remainder of the line. MoDOT, or any other entity, may utilize the Board's OFA process or enter a private agreement with UP to achieve this outcome.

LABOR PROTECTION

In approving this abandonment application, we must ensure that affected rail employees will be adequately protected. 49 U.S.C. 10903(b)(2). The conditions imposed in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979) (Oregon Short Line), satisfy the statutory requirements, and those conditions will be imposed here.

ENVIRONMENTAL ISSUES

The Board is also required to consider the environmental and energy impacts of the proposed abandonment. UP has submitted an environmental report with its application 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 its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on April 1, 2009, and requested comments by April 30, 2009.

In the EA, SEA indicates that the U.S. Environmental Protection Agency, Region 7 (EPA), noted that several facilities regulated by EPA are located near the right-of-way of the Line. According to SEA, EPA also noted that the remains of product spills, herbicide use, and wood preservatives could be present within the right-of-way. UP states that it is not aware of any known hazardous waste sites or sites where known hazardous waste spills have occurred on or along the Line. To address EPA's concerns however, SEA recommends that, prior to initiating salvage activities, UP be required to consult with EPA on the potential presence of EPA-regulated facilities within the Line's right-of-way.

In the EA, SEA also indicates that the Missouri Department of Natural Resources, Water Protection Program (MODNR), noted that a land disturbance permit may be required if the proposed abandonment would disturb one acre or more. Therefore, SEA recommends that, prior to initiating salvage activities, UP be required to consult with MODNR on the need for such a permit.

No one filed comments to the EA. Accordingly, the conditions recommended by SEA in the EA will be imposed. 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.

TRAIL USE

Sikeston requests issuance of a CITU pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), to enable the City to acquire the entire Line for recreational use. Sikeston has submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that its use 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, in a letter filed on April 17, 2009, that it has no objection to the City's request to the extent the Line is not sold or otherwise used for continued rail service. Because Sikeston's request complies with the requirements of 49 CFR 1152.29, and UP is willing to enter into negotiations, we will issue a CITU. The parties may negotiate an agreement during the 180-day period from the effective date of this decision and certificate. If an agreement is executed, 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). By law, use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

The parties should note that the trail use procedures could be delayed, or even foreclosed, if the financial assistance process under 49 U.S.C. 10904 is engaged. As stated in Rail Abandonments–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986) (Trails), OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under

49 U.S.C. 10904 and 49 CFR 1152.27(c)(1), the effective date of this decision and certificate will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(1). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the Line is sold under the OFA procedures, the abandonment application will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

PUBLIC USE

As SEA has indicated in the EA, the right-of-way may be appropriate for other public use after abandonment. Specifically, Sikeston asserts that the corridor would make an excellent recreational trail and the structures have considerable value for recreational trail purposes. Accordingly, Sikeston requests a public use condition under 49 U.S.C. 10905 that would preclude UP, for 180 days, from: (1) disposing of the corridor, other than track, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels. The City seeks the 180-day condition so that it can assemble and review land records and begin negotiations with UP.

When a person requests both a Trails Act condition and a public use condition, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. See Trails, 2 I.C.C.2d at 609. Here, Sikeston has met the public use criteria prescribed at 49 CFR 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) justification for the period of time requested. Accordingly, a 180-day public use condition also will be imposed, commencing from the effective date of this decision and certificate, 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, UP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, it should be noted that 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, UP is not required to deal exclusively with Sikeston, but may engage in negotiations with other interested persons.

The Board finds:

1. The present or future public convenience and necessity permit the abandonment of the above-described Line, subject to the employee protective conditions in Oregon Short Line, and the further conditions that UP shall: (1) leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (but not track, ties, or signal equipment), for a period of 180 days from the effective date of this decision, to enable any state or local government agency or any 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; and, (3) prior to initiating salvage

activities, UP shall: (a) consult with EPA on the potential presence of EPA-regulated facilities within the right-of-way of the Line; and (b) consult with MODNR on the need for a land disturbance permit.

2. Abandonment of the Line will not have a serious, adverse impact on rural and community development.

3. The Line may be suitable for other public purposes.

4. As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BLET's April 21, 2009 pleading is accepted as part of the record.

2. This application is granted subject to the conditions specified above.

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, 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.

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 certificate and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by December 14, 2009, 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. UP is directed to serve a copy of this decision and certificate on Tetra Pak, Steward, Cargill Ag Horizons, and River Bend Ag within 5 days after the service date of this decision and to certify to the Board that it has done so.

8. 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 26, 2009, 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 a $1,500 filing fee. See 49 CFR 1002.2(f)(25).

9. 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.**"

10. Provided no OFA has been received, this decision and certificate will be effective on July 17, 2009. Any petition to stay or petition to reopen must be filed as provided at 49 CFR 1152.25(e).

11. 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 17, 2010, 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, Acting Chairman Mulvey and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary

APPENDIX

	Base Year operations (10/2007-09/2008)	Forecast year operations (02/2009-01/2010)	Projected Subsidy year operations (02/2009-01/2010)
Revenues attributable for:			
1. Freight originated and/or terminated on branch	$702,647	$621,388	$621,388
2. Bridge Traffic			
3. All other revenue and income	$41,181	$42,416	$42,416
4. Total revenues attributable (lines 1 through 3)	$743,828	$663,804	$663,804
Avoidable costs for:			
5. On-branch costs (lines 5a through 5k)	$519,312	$515,389	$515,389
a. Maintenance of way and structures	$184,152	$185,949	$185,949
b. Maintenance of equipment	$6,279	$6,297	$6,297
c. Transportation	$299,412	$300,081	$300,081
d. General administrative			
e. Deadheading, taxi, and hotel			
f. Overhead Movement			
g. Freight car costs (other than return on freight cars)	$15,529	$13,801	$13,801
h. Return on value-locomotives	$7,094	$4,063	$4,063
i. Return on value-freight cars	$6,846	$5,198	$5,198
j. Revenue taxes			
k. Property taxes			
6. Off-branch costs	$408,899	$301,648	$301,648
a. Off-branch costs (other than return on freight cars	$257,431	$184,118	$184,118
b. Return on value-freight cars	$42,695	$24,902	$24,902
c. Off Branch URCS multiple adjustment			
d. Make whole adjustment Off Branch	$108,772	$92,628	$92,628
7. Total avoidable costs(line 5 plus line 6)	$928,211	$817,037	$817,037
Subsidization costs for:			
8. Rehabilitation		$215,508	$215,508
9. Administration costs (subsidy year only)			$6,638
10. Casualty reserve account			
11. Total subsidization costs (lines 8 through 10)		$215,508	$222,146
Return on value:			
12. Valuation of property (lines 12a through 12c)		$1,346,813	$1,346,813
a. Working capital		$20,672	$20,672
b. Income tax consequences		($778,845)	($778,845)
c. Net liquidation value		$2,104,986	$2,104,986
13. Nominal rate of return		0.1720	0.1720
14. Nominal return on value (line 12 times line 13)		$232,191	$232,191
15. Holding gain (loss)		$87,357	$87,357
16. Total return on value (line 14 minus line 15)		$144,834	$144,834
17. Avoidable loss from operations (line 4 minus line 7)	($184,383)	($153,233)	($153,233)
18. Estimated forecast year loss from operations (line 4 minus lines 7 and 16)		($298,067)	($298,067)
19. Estimated subsidy (line 4 minus 7,11, and 16)			($520,213)