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SERVICE DATE – MAY 20, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 267X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN COMANCHE COUNTY, OK

Decided: May 19, 2009

In this decision, a request for issuance of a notice of interim trail use (NITU) is denied and a request for imposition of a public use condition is granted.

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon, and discontinue its lease operation over, a 3.85-mile line of railroad known as the Lawton Industrial Lead, extending from milepost 50.75, near Fort Sill, to milepost 54.60, south of Lawton, in Comanche County, OK (the Line). Notice of the exemption was served and published in the Federal Register on December 12, 2008 (73 FR 75809). In a decision served on January 12, 2009, the proceeding was reopened and a condition was imposed requiring UP, prior to commencement of any salvage activities, to consult with U.S. Fish and Wildlife Service. The exemption became effective on January 13, 2009.

Trail Use Request

In a letter filed on January 30, 2009, the City of Lawton (the City) requests issuance of a NITU for the Line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. In response, UP refuses to negotiate on the belief that, as a lessor and not owner of the Line, it is not the appropriate party to negotiate for trail use. However, under Board precedent, the holder of the common carrier authority on a rail line is the entity that has the right to negotiate for trail use.<sup>1</sup> In this case, therefore, UP is the appropriate party to negotiate for trail use.

Nevertheless, because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. The Board's authority to impose trail use conditions is limited because the Board's role under the Trails Act is ministerial and the trail use program is voluntary and consensual between the railroad and the trail user. See Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001); Rail Abandonments—Use of Rights-of-Way as

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<sup>1</sup> St. Croix Valley Railroad Company—Abandonment and Discontinuance of Service Exemption—in Pine and Kanabec Counties, MN, STB Docket No. AB-850X, slip op. at 2 (STB served July 11, 2008 (entity that holds the common carrier obligation is the negotiator for trail use)).

Trails, 2 I.C.C.2d 591, 598 (1986) (Rail Abandonments). The City's trail use request will be denied because UP does not consent.

### Public Use Request

In its letter, the City also requests imposition of a 180-day public use condition for the Line under 49 U.S.C. 10905, specifically for trail use. The City requests that UP be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment and be barred from removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels. UP does not object to the public use request. Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the effective date of the exemption (January 13, 2009). Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found suitable for public purposes. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

As conditioned, 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 City's request for issuance of a NITU is denied.
3. The City's request for imposition of a public use condition is granted, as discussed in this decision. UP may discontinue service and salvage tracks and related materials. UP shall keep intact the right-of-way, including bridges, trestles, culverts, and tunnels for a period of 180 days, commencing from the January 13, 2009 effective date of the exemption (until July 12, 2009), to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use.
4. This decision is effective on its service date.

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By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary