

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.



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)  
UNION PACIFIC RAILROAD COMPANY-- )  
ABANDONMENT--IN HARRIS, FORT BEND, )  
AUSTIN, WHARTON, AND COLORADO )  
COUNTIES, TX )  
\_\_\_\_\_ )

AB-33 (Sub-No. 156) 236368  
236369

ENTERED  
Office of Proceedings  
July 29, 2014  
Part of  
Public Record

JOINT PETITION TO VACATE AND REISSUE CITU

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)  
UNION PACIFIC RAILROAD COMPANY-- )  
ABANDONMENT EXEMPTION--IN )  
COLORADO AND WHARTON COUNTIES, )  
TX )  
\_\_\_\_\_ )

AB-33 (Sub-No. 253X)

JOINT PETITION TO VACATE AND REISSUE NITU

FILED  
July 29, 2014  
SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED  
July 29, 2014  
SURFACE  
TRANSPORTATION BOARD

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Attorneys for Fort Bend County Toll  
Road Authority

Dated: July 29, 2014

**NOTE: The relief requested herein is contingent upon the Surface Transportation Board's issuance of an acquisition exemption to Metropolitan Transit Authority of Harris County, Texas in Finance Docket No. 35846 and an acquisition exemption to Fort Bend County Toll Road Authority in Finance Docket No. 35847, which requests are being filed simultaneously herewith.**

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ABANDONMENT--IN HARRIS, FORT BEND, )  
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AB-33 (Sub-No. 156)

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UNION PACIFIC RAILROAD COMPANY-- )  
ABANDONMENT EXEMPTION--IN )  
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AB-33 (Sub-No. 253X)

**JOINT PETITION TO VACATE AND REISSUE NITU**

**NOTE: The relief requested herein is contingent upon the Surface Transportation Board's issuance of an acquisition exemption to Metropolitan Transit Authority of Harris County, Texas in Finance Docket No. 35846 and an acquisition exemption to Fort Bend County Toll Road Authority in Finance Docket No. 35847, which requests are being filed simultaneously herewith.**

Pursuant to 49 C.F.R. § 1152.29(f), the Metropolitan Transit Authority of Harris County, Texas (METRO) and the Fort Bend County Toll Road Authority (FBCTRA) jointly petition the Surface Transportation Board (STB) to (1) reopen proceedings in the above-captioned causes, (2) vacate the Certificate of Interim Trail Use issued on November 8, 2000, as modified on December 1, 2006, in AB-33 (Sub-No. 156), with respect to a portion of the subject right-of-way, under which METRO has been operating as trail user, (3) vacate the Notice of Interim Trail Use issued on March 24, 2008 in AB-33 (Sub-No. 253X), under which METRO has been

operating as trail user, (4) reissue a Certificate of Interim Trail Use in AB-33 (Sub-No. 156) to FBCTRA with respect to a portion of the subject right-of-way, and (5) reissue a Notice of Interim Trail Use AB-33 (Sub-No. 253X) to FBCTRA. In support of their joint petition, METRO and FBCTRA submit the following:

#### Parties

METRO is a metropolitan transit authority created under the laws of Texas as a public body corporate and politic. FBCTRA is a Texas local government corporation created by and acting on behalf of Fort Bend County, Texas.

#### Background

This Joint Petition concerns a portion of a 57.72-mile line of railroad known as the Bellaire Subdivision, extending from milepost 3.48 near Bellaire Junction in Houston, Harris County, Texas, to milepost 61.2, near Eagle Lake, Colorado County, Texas in Harris, Fort Bend, Austin, Wharton, and Colorado Counties (the Westpark Line).<sup>1</sup>

On December 30, 1992, METRO purchased the Westpark Line and improvements from Southern Pacific Transportation Company (SP). The purchase transaction between METRO and SP was accomplished through, among other documents, five nearly identical special warranty deeds (the Vesting Deeds). Under the Vesting Deeds, SP retained an operating easement to conduct freight operations and to otherwise fulfill SP's obligations as a common carrier railroad over the Westpark Line (the Railroad Easement). *See generally Metropolitan Transit Authority of Harris County, TX-Petition for Declaratory Order*, 9 I.C.C.2d 559, F.D. 32260 (Apr. 15, 1993) (finding that METRO-SP transaction was not subject to the jurisdiction of the Commission). Union Pacific Railroad Company (UP) succeeded to SP's rights under the Railroad Easement.

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<sup>1</sup> In AB-33 (Sub-No. 253X), the line of railroad at issue was referred to as the Chesterville Industrial Lead, extending from milepost 52.9 near Chesterville, to milepost 61.2 near Eagle Lake, in Colorado and Wharton Counties, Texas.

AB-33 (Sub-No. 156)

On July 21, 2000, UP filed an application seeking authority to abandon a 49.42-mile stretch of the Westpark Line. Two requests for certificates of interim trail use were filed. On November 8, 2000, the STB issued its decision and Certificate of Interim Trail Use for the portion of the Westpark Line stretching from milepost 3.48 near Bellaire Junction in Houston, to milepost 52.9, near Chesterville (the Sub-No. 156 ROW). A true and accurate copy of the November 8, 2000 decision and Certificate of Interim Trail Use (the November 2000 CITU) is attached hereto as **Exhibit A**.

Thereafter, pursuant to an interim trail use/rail banking agreement and assignment and deed without warranty, METRO became the interim trail user for the Sub-No. 156 ROW. In the agreement, UP also conveyed the Railroad Easement, together with all of UP's other rights, title, and interests in and to the Sub-No. 156 ROW to METRO, subject to certain conditions and exceptions. Thus, pursuant to the agreement, METRO became the interim trail user and the holder of the rail (restoration) rights for the Sub-No. 156 ROW.

On December 1, 2006, the STB issued its decision granting METRO's request to vacate the November 2000 CITU for a portion of the 100-foot wide right-of-way between milepost 15.65, at or near Dairy Ashford Road, and milepost 20.76, at or near Barker Cypress Road, a distance of approximately 5.11 miles in Harris County. The December 1, 2006 decision left the November 2000 CITU in effect for the remainder of the Sub-No. 156 ROW described in the November 2000 CITU. The portion of the Sub-No. 156 ROW modified in December 2006 is not at issue in this Joint Petition.

AB-33 (Sub-No. 253X)

On January 28, 2008, UP filed a notice of exemption seeking authority to abandon the remaining 8.3 miles of the Westpark Line, between milepost 52.9 near Chesterville in Wharton County, Texas, and milepost 61.2 near Eagle Lake in Colorado County, Texas (the Sub-No. 253X ROW). METRO filed a petition for trail use/rail banking condition for the Sub-No. 253X ROW. On March 24, 2008, the STB issued its decision and Notice of Interim Trail Use for the Sub-No. 253X ROW. A true and accurate copy of the March 24, 2008 decision and notice of interim trail use (the March 2008 NITU) is attached hereto as **Exhibit A-1**.

Thereafter, pursuant to an interim trail use/rail banking agreement and assignment and deed without warranty, METRO became the interim trail user for the Sub-No. 253X ROW. In the agreement, UP also conveyed the Railroad Easement, together with all of UP's other rights, title, and interests in and to the Sub-No. 253X ROW to METRO, subject to certain conditions and exceptions. Thus, pursuant to the agreement, METRO became the interim trail user and the holder of the rail (restoration) rights for the Sub-No. 253X ROW.

The Transaction Between METRO and FBCTRA

METRO and FBCTRA have entered into negotiations pursuant to which METRO intends to sell to FBCTRA approximately 480.59 acres of real property in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas (the Property). The Property includes (1) a portion of the Sub-No. 156 ROW, between milepost 20, approximately 2,020 feet east of the Harris-Fort Bend County line, and milepost 52.9, near Chesterville, a distance of 32.9 miles in Fort Bend, Austin, Wharton, and Colorado Counties, Texas, and (2) all of the Sub-No. 253X ROW (collectively, the Subject ROW). The Subject ROW occupies approximately 454.55 acres of the total 480.59 being purchased by FBCTRA. The purchase of the Property will allow FBCTRA to extend the Westpark Tollway, a limited-access toll road serving western Houston and Harris County and northeastern Fort Bend County, and expand Farm to Market Road 1093 (FM 1093).

In connection with the sale of the Subject ROW, METRO intends to assign to FBCTRA (1) a portion of the interim trail use agreement for Sub-No. 156 ROW, for the ROW milepost 20,

approximately 2,020 feet east of the Harris-Fort Bend County line, and milepost 52.9, near Chesterville, and (2) the interim trail use agreement covering the Sub-No. 253X ROW.<sup>2</sup> METRO and FBCTRA have executed an Interlocal Agreement to provide for the development of transportation projects permitted by, and the cooperative preservation of the Subject ROW under, the National Trails System Act (Trails Act) and its implementing regulation, while providing for the transfer of ownership and control of the Subject ROW and assignment of the trail use agreement for the Subject ROW to FBCTRA. In the Interlocal Agreement, METRO and FBCTRA have pledged to maintain the Subject ROW for future rail transit use.

FBCTRA's immediate development plans include the expansion of the Westpark Tollway for a 13-mile stretch beginning at milepost 20, approximately 2,020 feet east of the Harris-Fort Bend County border. Within this 13-mile stretch, FBCTRA has acquired, or intends to acquire, sufficient real property to comprise a 300-foot wide corridor running over and parallel to the first 13 miles of the Subject ROW. Also within this 13-mile stretch, FBCTRA intends to preserve 26 feet of the original 100 feet of the Subject ROW for future restoration of rail service. Although FBCTRA has reserved 26 feet of the original Subject ROW for restoration of future rail service, all 300 feet of FBCTRA's transportation corridor remains available for future transit/rail development. The maps attached hereto depict the Westpark Line as it exists as of

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<sup>2</sup> The contemplated sale of the Property encompasses the sale of all of METRO's rights to and interests in the Property and the Subject ROW, including but not limited to the right to restore rail service over the Subject ROW. The result of the contemplated transaction -- that FBCTRA as trail user will also hold the restoration rights -- is not inconsistent with the rail banking purposes of the Trails Act. *King County, WA--Acquisition Exemption--BNSF Railway Company*, STB Finance Docket No. 35148 (STB served Sept. 18, 2009) (*King County*). On July 29, 2014, METRO filed a notice of exemption under 49 C.F.R. § 1150.31 seeking retroactive authority to acquire the right to restore rail service over the Westpark Line in accordance with *King County, Norfolk & W. Ry. Co.--Abandonment--Between St. Mary's and Minister in Auglaize County, OH*, 9 I.C.C.2d 1015, 1018 (1993), and *Iowa Power -- Construction Exemption--Council Bluffs, IA*, 8 I.C.C.2d 858, 866-67 (1990). See *Metropolitan Transit Authority of Harris County, Texas--Acquisition Exemption--Union Pacific Railroad Company's Right to Restore Rail Service over Rail Banked Right-of-Way in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas*, STB Finance Docket No. 35846. Also on July 29, 2014, FBCTRA filed its own notice of exemption seeking authority to acquire the right to restore rail service over the Subject ROW. See *Fort Bend Toll Road Authority--Acquisition Exemption--Metropolitan Transit Authority of Harris County, Texas's Right to Restore Rail Service over Rail Banked Right-of-Way in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Texas*, STB Finance Docket No. 35847. **FBCTRA's request for an exemption is contingent upon the Board's issuance of an exemption to METRO in Finance Docket No. 35846.**

today's filing date (**Exhibit B**) and FBCTRA's plans for expansion of the Westpark Tollway, including its reservation of 26 feet of the original 100 feet of the Subject ROW for future restoration of transit/rail service (**Exhibits C and C-1**).

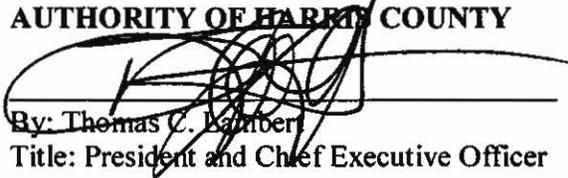
Information Required Under Section 1152.29(f)

The substitution of FBCTRA will not have any adverse effects upon UP because FBCTRA has agreed to be bound by the trail use agreements reached by METRO and UP and has similarly agreed to comply with all the provisions of rail banking under 16 U.S.C. § 1247(d).

The date for the transition of total responsibility as the new interim trail manager to FBCTRA will be no sooner than sixty (60) days from the filing of this petition.

Attached hereto as **Exhibit D** is FBCTRA's Statement of Willingness to Assume Financial Responsibility for the Subject ROW and acknowledgment that interim trail use is subject to possible future reconstruction and reactivation of the Subject ROW for rail service.

**METROPOLITAN TRANSIT  
AUTHORITY OF HARRIS COUNTY**



By: Thomas C. Lambert  
Title: President and Chief Executive Officer

**FORT BEND COUNTY TOLL  
AUTHORITY**

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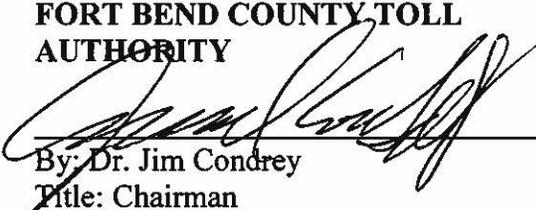
By: Dr. Jim Condrey  
Title: Chairman

**METROPOLITAN TRANSIT  
AUTHORITY OF HARRIS COUNTY**

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By: Thomas C. Lambert  
Title: President and Chief Executive Officer

**FORT BEND COUNTY TOLL  
AUTHORITY**



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By: Dr. Jim Condrey  
Title: Chairman

**Exhibit A**  
**November 2000 CITU**

31249  
EB

SERVICE DATE - NOVEMBER 8, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 156)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—IN HARRIS, FORT BEND,  
AUSTIN, WHARTON AND COLORADO COUNTIES, TX

Decided: November 7, 2000

On July 21, 2000, Union Pacific Railroad Company (UP) filed an application under 49 U.S.C. 10903 seeking authority to abandon a 49.42-mile line of railroad known as the Bellaire Subdivision, extending from milepost 3.48 near Bellaire Junction in Houston, to milepost 52.9 near Chesterville, in Harris, Fort Bend, Austin, Wharton and Colorado Counties, TX.<sup>1</sup> UP also seeks to be exempted from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. On August 22, 2000, a request for issuance of a certificate of interim trail use (CITU) and for imposition of a public use condition was jointly filed by the Sierra Club (Houston Chapter) and the Houston Area Bicyclists Alliance (collectively, Sierra Club/Bicyclists Alliance). On September 5, 2000, a request for a CITU was also filed by The Metropolitan Transit Authority of Harris County, Texas (METRO). The filing included METRO's opposition to the public use request of the Sierra Club/Bicyclists Alliance.<sup>2</sup> On September 22, 2000, METRO filed supplemental comments addressing and supporting UP's request for an exemption from the OFA and public use provisions. On October 3, 2000, the Sierra Club/Bicyclists Alliance filed a supplemental comment in opposition to METRO's request for a CITU. On October 13, 2000, METRO moved to reject the October 3 filing or, in the alternative, for leave to file a reply. Upon review of the record, we will grant the application, subject to standard employee protective conditions, and issue a CITU.

PRELIMINARY MATTER

In addition to the above-mentioned filings, TXI Operations, LP (TXI) filed on September 27, 2000, a motion to intervene and protest or, in the alternative, to request the imposition of conditions on the abandonment that would allow a shortline carrier to provide service to shippers on the line by connecting with other railroads, including UP. Specifically, TXI requests that we require UP to remove restrictive covenants that forbid freight rail service on the line, to grant METRO or its contract railroad operator trackage rights on UP track that is not

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<sup>1</sup> Notice of the filing of the application was served and published in the Federal Register (65 FR 49055-56) on August 10, 2000.

<sup>2</sup> On September 19, 2000, UP also filed opposition to the imposition of a public use condition and its agreement to the imposition of a trail use condition.

being abandoned, and to provide reasonable rates for connecting freight from the line. Alternatively, TXI requests that the abandonment application be granted only for the portion of the line east of U.S. Highway 6. On October 6, 2000, UP filed a reply urging us to deny TXI's motion because it was filed after the protest due date, and alternatively, responding to the merits. UP states that it is prepared to waive the restrictive covenant, if deemed necessary, when it conveys the easement to METRO,<sup>3</sup> and argues that the trackage rights and rate relief requested by TXI cannot be granted in this abandonment proceeding.

The motion to intervene will be denied and TXI's protest will not be considered. TXI was provided with a Notice of Intent to Abandon on June 26, 2000, pursuant to 49 CFR 1152.20(a)(2), and was also served with a copy of the abandonment application on July 20, 2000, but it did not file a timely protest.<sup>4</sup> Although it styles its filing an "Emergency Motion to Intervene and Protest," TXI does not give a reason for filing over 20 days beyond the protest period. Because TXI has not provided us with a basis upon which to grant its motion, we have no alternative but to deny it. In any event, consideration of the late protest would not affect the result reached here. UP has agreed to waive the restrictive covenant against freight operations as requested by TXI,<sup>5</sup> and this proceeding is not the appropriate forum in which to grant the trackage rights<sup>6</sup> and rate relief requested by TXI.<sup>7</sup>

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<sup>3</sup> As will be discussed in the Background section, infra, UP operates the line pursuant to an easement.

<sup>4</sup> Protests were due by September 5, 2000. TXI did not file until September 27, 2000.

<sup>5</sup> In its September 22 supplemental comments, METRO states that it is mindful that the proposed abandonment may impact those shippers located at Clodine, TX, and that, because it does not anticipate restoring rail service and offering commuter operations on the line between Eagle Lake, TX, and Clodine within the next 10 years, it is willing to negotiate a limited-term contract with a modified certificate operator pursuant to 49 CFR 1150.21 following the Board's approval of the abandonment.

<sup>6</sup> See Consolidated Rail Corporation--Abandonment Exemption--in Erie County, NY, STB Docket No. AB-167 (Sub-No. 1164X), et al., slip op. at 10 (STB served Oct. 7, 1998).

<sup>7</sup> Compare Union Pacific Railroad Company--Abandonment--Between Bascule Bridge and Clarksburg, Yolo County, CA, Docket No. AB-33 (Sub-No. 64), slip op. at 12-13 (ICC served Sept. 10, 1990) (no need found to regulate rates in an abandonment proceeding).

## BACKGROUND

UP<sup>8</sup> presently provides rail operations pursuant to an easement which was reserved along with the common carrier obligation to provide service when the right-of-way was sold to METRO by SP on December 30, 1992. The sale was the subject of a declaratory order proceeding before the Interstate Commerce Commission (ICC), the Board's predecessor, wherein the ICC determined that the purchase of the Bellaire Branch,<sup>9</sup> with the operating easement reserved by SP, was not subject to its jurisdiction. See Metro. Transit Auth. of Harris County, TX-Declar. Order, 9 I.C.C.2d 559 (1993). UP now seeks abandonment of the common carrier obligation which it inherited from SP.

The stated reasons for abandonment are: (1) freight revenues from the line are insufficient to justify the costs of operation and maintenance; (2) there is no reasonable prospect that traffic and revenues will increase sufficiently in the foreseeable future to justify continued operation of the line; and (3) the right-of-way is urgently needed for a higher purpose. We will explore these issues below.

## TRAFFIC, OPERATIONS, AND REVENUES

There are five shippers on the line: Wenco Distributors; TXI; Pioneer Concrete (Pioneer); Ringling Bros. and Barnum & Bailey Circus; and Reliant Energy. According to UP, the traffic for these shippers during the base year (May 1, 1999-April 30, 2000) amounted to 203 carloads, consisting of lumber, boards, clay, chemical waste, circus equipment, and animal stock. Revenue generated from this traffic amounted to \$540,807. UP projects the same 203-carload level for the forecast year (July 1, 2000-June 30, 2001) and estimates forecast year freight revenues of \$559,678. There is no overhead traffic.

UP states that the only significant decline in traffic has been in aggregate commodities—sand and gravel. According to UP, the decline was due to a derailment that occurred in February 1999 on TXI's spur track that resulted from a wide-gauge problem. Because of that problem, UP was unable to continue service in these commodities to TXI and its tenant industry, Pioneer, until TXI repaired its spur track to accommodate the heavy unit trains.

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<sup>8</sup> UP is the successor in interest to the Southern Pacific Transportation Company (SP) pursuant to the Board's authority granted in Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996).

<sup>9</sup> Also known as the Westport Line, the Bellaire Branch extended from milepost 3.48 at Dunlavy Street in Houston along Westpark Boulevard to milepost 61.2 at Eagle Lake.

This was never done. UP submits that TXI's track is still capable of receiving single, light-weight loads.<sup>10</sup>

Service on the line west of Bellaire Junction is provided, as needed, 6 days a week by one local train which originates in Rosenberg, TX, on the Glidden Subdivision. Service on the line east of Bellaire Junction is provided once a year by a yard job working out of Hardy, TX, for circus train equipment and stock cars.

#### AVOIDABLE COSTS

Avoidable costs are costs that applicant will cease to incur if it abandons and discontinues service over the line. UP has submitted data showing avoidable on-branch costs for the base and forecast years. These include: maintenance-of-way and structures, maintenance of equipment (including depreciation), transportation, locomotive and freight car costs (other than return). UP's total avoidable on-branch costs are \$602,544 for the base year and \$603,354 for the forecast year. UP's total avoidable off-branch costs are \$464,052 for the base year and \$473,412 for the forecast year.

#### LINE CONDITION AND REHABILITATION

The main track or active portion of the Bellaire Subdivision, between milepost 5.36 and milepost 52.9, is constructed of a mix of continuous welded and jointed rail. The line has a maximum speed of 25 m.p.h., except from milepost 5.36 to milepost 22.2, and from milepost 33.4 to milepost 52.9, where the maximum speed is 10 m.p.h. UP states that the main track has been maintained to Federal Railroad Administration Class 2 safety standards and requires no rehabilitation. In the base year, UP incurred normalized maintenance costs of \$524,604 and it estimates that normalized maintenance costs for the forecast year would be \$529,833.<sup>11</sup>

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<sup>10</sup> UP explains that one of its employees misinterpreted the ban on heavy unit trains as applying to all traffic and apparently informed TXI that it could not ship anymore. UP submits that TXI has since been told that it can still receive silica gel cars to its facility. TXI apparently made other arrangements for transportation of sand and gravel to its readymix concrete plants. UP surmises that Pioneer made other arrangements as well.

<sup>11</sup> UP explains that the high normalized maintenance costs are due to the existence of 93 road crossings, 48 of which are signalized.

## OPPORTUNITY COSTS AND SUBSIDIZATION 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. UP calculates that the line's total opportunity cost for the forecast year would be \$2,904.<sup>12</sup> It estimates that the total subsidization cost (consisting solely of administrative costs) would be \$5,597 in the forecast year.

## SUMMARY OF COST AND REVENUE EVIDENCE

UP has made a prima facie case for abandonment supported by extensive workpapers. The data submitted by UP conform to Board regulations at 49 CFR 1152.30-36 and appear reasonable. UP's evidence indicates that for the forecast year, the line would generate total revenues of \$559,678 and total avoidable costs of \$1,076,766 (on-branch costs of \$603,354, plus off-branch costs of \$473,412), resulting in an avoidable loss from operations of \$517,088. When opportunity costs of \$2,904 are factored in, the total forecast year avoidable loss is \$519,992. The estimated subsidy payment is \$525,589. A complete summary of the revenue and cost data is set forth in the appendix.<sup>13</sup>

## ALTERNATIVE TRANSPORTATION

UP states that the line is situated between two other parallel UP lines. The Glidden Subdivision, UP's main line between Houston and San Antonio, runs adjacent to U.S. Highway 90A and roughly parallels the Subdivision. UP's Smithville Subdivision parallels Interstate Highway 10 for approximately 20 miles. Its eastern terminus at Katy, TX, is approximately 7 miles north of the line. Going westward, the Smithville Subdivision diverges from the Bellaire Branch, and at Sealy, TX, is 12 miles north of Wallis, TX, at milepost 44.8 on the line. UP also submits that motor carrier service is readily accessible in the area.

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<sup>12</sup> 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) current income tax benefits (if any) resulting from abandonment; and (3) the net liquidation value (NLV) of the line. The investment base (or valuation of the road properties) is multiplied by the current 15.6% nominal rate of return, to yield the nominal return on value which must be 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 1 additional year. In this case, the opportunity cost is low because the right-of-way, including all land, track, track structures and bridges, was sold to METRO in 1992, and hence there is no income tax consequence or NLV.

<sup>13</sup> There is a discrepancy of \$1.00 between some of the amounts in the appendix and the corresponding amounts submitted by UP in the text of the application, which apparently is the result of rounding off numbers.

### SHIPPER AND COMMUNITY INTERESTS

Letters in support of the abandonment were filed by METRO, the Harris County Toll Road Authority (Toll Road Authority), and Fort Bend County. METRO states that it currently operates several transit facilities along the rail corridor and it is continuing to study corridor use for high capacity transit. METRO and the Toll Road Authority have recently concluded an agreement for the Toll Road Authority to purchase a portion of the right-of-way for the construction of a limited access toll road between two nearby limited access highways, Texas Highway 6 and U.S. Highway 59. They state that the toll road will provide access for METRO buses and will relieve congestion on these highways and on other parallel thoroughfares between downtown Houston and its western suburbs. Fort Bend County expects that the highway construction that the abandonment will allow will be beneficial to the county.

### DISCUSSION AND CONCLUSIONS

The statutory standard governing an abandonment or discontinuance of service is whether the present or future public convenience and necessity permit the proposed abandonment or discontinuance. 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). Essentially, the Board must determine whether the burden on the railroad from continued operation is outweighed by the burden on the shippers and the community from the loss of rail service.

The record shows that UP's continued operation of the line will result in a total forecast year operating loss of \$517,088, and when opportunity costs of \$2,904 are factored in, a total annual loss of \$519,992. There is nothing of record to suggest that the line will be profitable in the future. Thus, we conclude that the line will suffer continual losses if the proposed abandonment is denied.

In view of the lack of evidence contradicting UP's estimates, we conclude that any harm to the shippers and the community from the proposed abandonment is outweighed by the demonstrated harm to UP and the burden on interstate commerce through continued operation of the line. We will therefore grant the abandonment application.

EXEMPTION REQUESTS

UP requests to be exempted from the OFA requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. Exemptions from 49 U.S.C. 10904-05 have been granted from time to time, provided the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.<sup>14</sup> In support of its request, UP states that the right-of-way is already owned by a public entity, METRO, and will continue to be used for an important public purpose, a public transit corridor. In addition, UP points to METRO's impending conveyance of a portion of the right-of-way to the Toll Road Authority for a toll road<sup>15</sup> and the fact that there is no overriding public need for continued rail service.

As noted earlier, METRO opposes the request of Sierra Club/Bicyclists Alliance for a public use condition. Even though METRO acknowledges that a person who files under the National Trails System Act (Trails Act) may also file for public use, it argues that the only public use proposed by Sierra Club/Bicyclists Alliance is for a trail and that the result of imposing a public use condition will be to tie up the property for 180 days.

Here, because the right-of-way is already owned by a public entity for public purposes, a public use for the right-of-way has already been established. Accordingly, we will grant UP's request and exempt the proposed abandonment from the public use provisions of 49 U.S.C. 10905 under our authority at 49 U.S.C. 10502. We find that application of the public use provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 and application of the provision is not needed to protect shippers from the abuse of market power.

Under 49 U.S.C. 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an OFA to acquire a line that the Board has authorized to be discontinued or abandoned or subsidize the losses of the existing operator. METRO proposes to transfer only a portion of the right-of-way to the Toll Road Authority. Moreover, METRO does not anticipate that it will be ready to restore rail service and offer commuter operations on the line for at least 10 years. Because METRO has no immediate planned use of the property for rail service and UP does not provide sufficient reason to foreclose the OFA process, we will deny its request to be exempted from the OFA provisions. We note that an OFA to continue freight rail service would not appear to preclude or hinder the proposed toll road construction.

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<sup>14</sup> See Union Pacific Railroad Company—Abandonment Exemption—In Monroe County, IA, STB Docket No. AB-33 (Sub-No. 153X), slip op. at 4 (STB served Sept. 1, 2000).

<sup>15</sup> METRO states that UP erred in its application in stating that METRO had agreed to convey a 12-mile segment of the right-of-way to the Toll Road Authority. METRO states that it is conveying a 50-foot wide corridor to the Toll Road Authority and retaining the remaining 50 feet of the 100-foot wide right-of-way for METRO's future railroad use.

### 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). We have found that the conditions imposed in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979) (Oregon), satisfy the statutory requirements, and we will impose those conditions 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. Our 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 August 23, 2000, and requested comments by September 21, 2000.<sup>16</sup> No comments to the EA have been filed. In its EA, SEA recommended that no environmental conditions be imposed on the abandonment. We agree with SEA's recommendation.

### TRAIL USE

The Sierra Club/Bicyclists Alliance and METRO request issuance of a CITU pursuant to section 8(d) of the Trails Act, 16 U.S.C. 1247(d). The Sierra Club/Bicyclists Alliance and METRO each have submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. As previously noted, UP filed a letter stating that it is willing to negotiate trail use, Sierra Club/Bicyclists Alliance filed a supplemental comment in opposition to METRO's request for a CITU, and METRO moved to reject Sierra Club/Bicyclists Alliance's supplemental comment as a prohibited reply to a reply under 49 CFR 1104.13(c). We will grant the motion to reject. Because interim trail use agreements are voluntary, where more than one entity makes an interim trail use proposal, the railroad is free to choose which, if any, organization it wishes to deal with. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986) (Trails). Because the requests of the Sierra Club/Bicyclists Alliance and METRO comply 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 prescribed below. 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

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<sup>16</sup> A Notice to the Parties was served on August 25, 2000, to correct the beginning milepost designation stated in the EA from 3.84 to 3.48.

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 trail use could be delayed, or even foreclosed, by the financial assistance process. As stated in Trails, 2 I.C.C.2d at 608, OFAs to acquire rail lines for continued rail service or to subsidize rail operations take 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 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.

We find:

1. The present or future public convenience and necessity permit the abandonment of the above-described line, subject to: (1) the employee protective conditions in Oregon; and (2) the condition that UP comply with the interim trail use/rail banking procedures, as set forth below.

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

3. Application of the public use provisions of 49 U.S.C. 10905 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 and application of the provision is not needed to protect shippers from the abuse of market power.

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

It is ordered:

1. TXI's motion to intervene is denied.

2. METRO's motion to reject the Sierra Club/Bicyclists Alliances' October 3, 2000 supplemental comment is granted.

3. UP's request for an exemption from the public use requirements of 49 U.S.C. 10905 is granted under 49 U.S.C. 10502. Its request for an exemption from the OFA requirements of 49 U.S.C. 10904 is denied.

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

5. If 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.

6. 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.

7. 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.

8. If no agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and certificate, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.

9. UP must promptly provide any interested persons the information they require to formulate an OFA to acquire or subsidize the line.

10. 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 November 17, 2000, 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 \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

11. 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."**

12. Provided no OFA has been received, this decision will be effective December 8, 2000. Any petition to stay or petition to reopen must be filed as provided at 49 CFR 1152.25(e).

13. Pursuant to the provisions of 49 CFR 1152.29(e), UP shall file 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 November 8, 2001, 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.

STB Docket No. AB-33 (Sub-No. 156)

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary

APPENDIX  
COST AND REVENUE DATA

	Railroad's Base Year	Railroad's Forecast Year
1. Freight Orig. and/or Term. on Branch	\$540,807	\$559,678
2. Bridge Traffic	0	0
3. All Other Revenue and Income	0	0
<b>4. Total Attributable Revenue (Ls. 1 thru 3)</b>	<b>\$540,807</b>	<b>\$559,678</b>
<b>5. On-branch Costs:</b>		
a. Maintenance-of-Way and Structures	\$524,604	\$529,833
b. Maintenance-of-Equipment (Including Depreciation)	8,147	7,979
c. Transportation	47,658	45,795
d. General & Administrative	0	0
e. Deadheading, Taxi and Hotel	0	0
f. Overhead Movement	0	0
g. Freight Car Costs (Other Than Return)	6,877	6,989
h. Return on Value - Freight Cars	4,243	3,546
i. Return on Value - Locomotives	11,015	9,212
j. Revenue Taxes	0	0
k. Property Taxes	0	0
<b>l. Total (Ls. 5a thru 5k)</b>	<b>\$602,544</b>	<b>\$603,354</b>
m. Holding Gains - Locomotives	0	0
n. Holding Gains (Loss) - Freight Cars	0	0
<b>o. Net On-br Costs (Ls. 5l - 5m &amp; 5n)</b>	<b>\$602,544</b>	<b>\$603,354</b>
<b>6. Off-branch Costs:</b>		
a. Off-Branch Costs (Other Than Return)	\$399,551	\$410,041
b. Return on Value - Freight Cars	64,501	63,371
c. Holding Gains - Freight Cars	0	0
<b>d. Net Off-br Costs (Ls. 6a+6b - 6c)</b>	<b>\$464,052</b>	<b>\$473,412</b>
<b>7. Total Avoidable Costs (L. 5o + L. 6d)</b>	<b>\$1,066,596</b>	<b>\$1,076,766</b>
8. Rehabilitation	\$0	\$0
9. Administrative Costs (Subsidy Year Only)	5,408	5,597
10. Casualty Reserve Account	0	0
<b>11. Total Subsidization Cost (Ls. 8 thru 10)</b>	<b>\$5,408</b>	<b>\$5,597</b>
<b>12. Valuation of Road Properties</b>		
a. Working Capital	\$21,621	\$21,833
b. Income Tax Consequences	0	0
c. Net Liquidation Value	0	0
<b>d. Total (Ls. 12a thru 12c)</b>	<b>\$21,621</b>	<b>\$21,833</b>
13. Nominal Rate of Return	15.6%	15.6%
14. Nominal Return on Value (L. 12d x L. 13)	\$3,373	\$3,406
15. Holding Gain (Loss)	\$0	\$502
<b>16. Total Return on Value (L. 14 - L. 15)</b>	<b>\$3,373</b>	<b>\$2,904</b>
<b>17. Avoidable (Loss) or Profit from Operations (L. 4 - L. 7)</b>	<b>(\$525,789)</b>	<b>(\$517,088)</b>
<b>18. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&amp;16)</b>	<b>(\$529,162)</b>	<b>(\$519,992)</b>
<b>19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, &amp; 16)</b>	<b>(\$534,570)</b>	<b>(\$525,589)</b>

**Exhibit A-1**  
**March 2008 NITU**

38870  
DO

SERVICE DATE – LATE RELEASE MARCH 24, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 253X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–  
IN COLORADO AND WHARTON COUNTIES, TX

Decided: March 24, 2008

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an 8.3-mile line of railroad known as the Chesterville Industrial Lead, extending from milepost 52.9 near Chesterville to milepost 61.2 near Eagle Lake, in Colorado and Wharton Counties, TX.<sup>1</sup> Notice of the exemption was served and published in the Federal Register on February 15, 2008 (73 FR 8928-29). The exemption was scheduled to become effective on March 18, 2008.

On February 25, 2008, and as amended on March 6, 2008, Metro filed a request pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29 for issuance of a notice of interim trail use (NITU) for the right-of-way. Metro has submitted a statement of willingness to assume financial responsibility for the 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, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. In a letter filed on March 14, 2008, UP consents to the issuance of a NITU.

Because Metro's request complies with the requirements of 49 CFR 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued for the aforementioned segment. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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> UP sought to abandon its retained railroad operating easement to provide common carrier service over the line. UP previously sold the track and right-of-way to Metropolitan Transit Authority of Harris County, TX (Metro). Metro holds no common carrier obligation.

It is ordered:

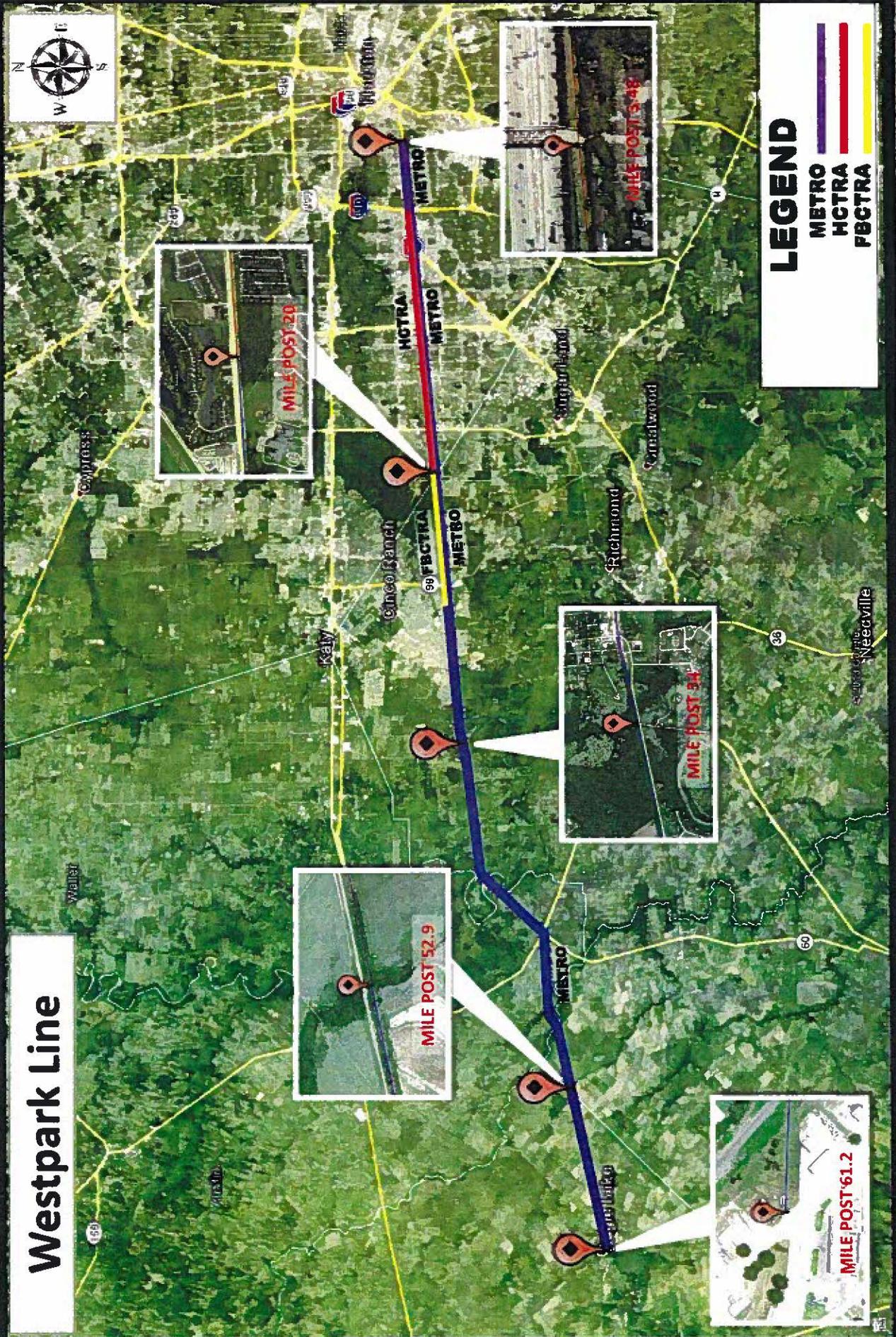
1. This proceeding is reopened.
2. The request for a NITU, under 16 U.S.C. 1247(d), is granted.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising 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 notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by September 14, 2008, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.
7. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary

**Exhibit B**  
**Westpark Line (Current Status)**

# Westpark Line



## LEGEND

- METRO
- HCTRA
- FBCTRA

**Exhibit C**

**Westpark Line (Future Status)**

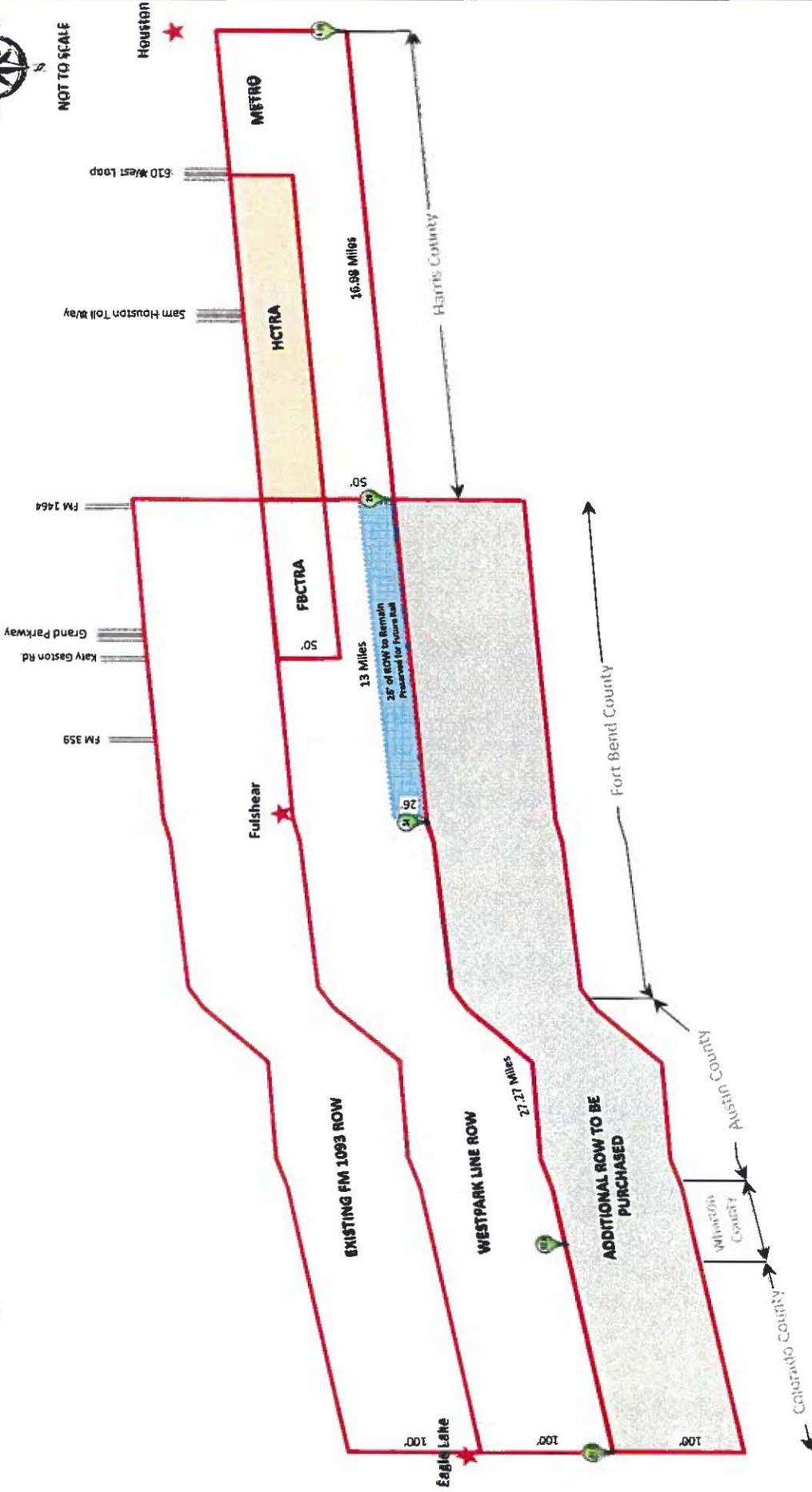


**Exhibit C-1**  
**Westpark Line (Future Status)**

# Westpark Line



NOT TO SCALE



**Exhibit D**

**Statement of Willingness to Assume Financial Responsibility**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.**

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**UNION PACIFIC RAILROAD COMPANY--  
ABANDONMENT--IN HARRIS, FORT BEND,  
AUSTIN, WHARTON, AND COLORADO  
COUNTIES, TX**

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)  
) **AB-33 (Sub-No. 156)**  
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**UNION PACIFIC RAILROAD COMPANY--  
ABANDONMENT EXEMPTION--IN  
COLORADO AND WHARTON COUNTIES,  
TX**

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) **AB-33 (Sub-No. 253X)**  
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**Statement of Willingness to Assume Financial Responsibility**

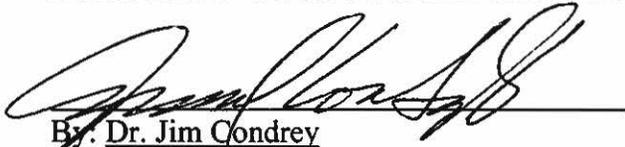
In order to establish interim trail use and railbanking under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, the Fort Bend County Toll Road Authority (interim trail user) is willing to assume full responsibility for management of, for any legal liability arising out of (unless the user is immune from liability, 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. The property consists of a portion of the right of way known as the Westpark Line, extending from milepost 20, approximately 2,020 feet east of the Harris-Fort Bend County line, to milepost 61.2, near Eagle Lake, in Harris, Fort Bend, Austin, Colorado and Wharton Counties, Texas. The right of way is part of a line of railroad for which Union Pacific Railroad Company applied for abandonment authority in Docket No. AB-33 (Sub-No. 156) and with respect to which Union Pacific Railroad Company filed a notice of exemption seeking abandonment authority in Docket No. AB-33 (Sub-No. 253X).

A map depicting the property is attached.

The Fort Bend County Toll Road Authority acknowledges that use of the right-of-way is subject to the user continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

A copy of this statement is being served on Union Pacific Railroad Company on the same date it is being served on the Board.

**FORT BEND COUNTY TOLL ROAD AUTHORITY**



By: Dr. Jim Condrey  
P.O. Box 2789  
Sugar Land, Texas 77487

Dated: July 10, 2014

**Map Depicting Property**

# Westpark Line

