



## Wisconsin Department of Transportation

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December 12, 2014

**ELECTRONIC FILING**

ENTERED  
Office of Proceedings  
December 15, 2014  
Part of  
Public Record

Ms. Cynthia T Brown,  
Chief of Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

**RE: STB Docket No. AB-33 (Sub-No. 104x)  
Wisconsin Department of Natural Resources – Petition to Reopen and Modify –  
Oconto County, WI**

Dear Ms. Brown:

On behalf of the Wisconsin Department of Natural Resources, I respectfully submit this Petition to Reopen and Modify electronically.

The State of Wisconsin Department of Natural Resources, (“WDNR”), as an executive agency of the State of Wisconsin, also respectfully requests the Surface Transportation Board (the “Board”) pursuant to 49 C.F.R. 1002.2(e)(1) waive the filing fee for this Petition. WisDOT avers that its involvement in this matter satisfies the “best interest of the public” standard of 49 CFR 1002.2(e)(2)(ii), and is thus entitled to waiver of the fee under that regulation.

Sincerely yours,

A handwritten signature in cursive script that reads "Kathleen Chung".

Kathleen Chung, State Bar no. 1032802  
Assistant General Counsel  
Wisconsin Department of Transportation

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. AB-33 (Sub No. 104x)**

**WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
-- PETITION TO REOPEN AND MODIFY--  
OCONTO COUNTY, WI**

Kathleen Chung, State Bar No. 1032802  
Assistant General Counsel  
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Attorney for Petitioner  
Wisconsin Department of Transportation

**ELECTRONIC FILING**

Dated this 15<sup>th</sup> day of December 2014.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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**AB-33 (SUB-NO. 104x)**

UNION PACIFIC RAILROAD COMPANY –  
ABANDONMENT EXEMPTION  
IN OCONTO COUNTY, WISCONSIN

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**WISCONSIN DEPARTMENT OF NATURAL RESOURCES (WDNR)  
PETITION TO REOPEN AND MODIFY**

The Union Pacific Railroad Company, (“UP”) filed with the Surface Transportation Board (Board) a Notice of Exemption under 49 CFR 1152 Subpart F – Exempt Abandonments to abandon an 8.3 -mile line of railroad, (the corridor), formerly the Oconto Falls Industrial Lead from Milepost 54.4, near Oconto, Wisconsin to the end of the line at milepost 46.1, near Stiles Junction, in Oconto County, Wisconsin. The line traverses through United States Postal Service Zip Codes 54153 and 54139.

The Wisconsin Department of Natural Resources (“WDNR”) acquired the corridor from UP pursuant to 49 C.F.R. §1152.29, and created a trail upon the corridor. Now, WDNR petitions the Board to reopen and modify the Notice of Interim Trail Use (“NITU”), and vacate the NITU in favor of abandonment.

**BACKGROUND**

On Service Date January 9, 1997, the Surface Transportation Board (“Board”) issued a Decision and Notice of Interim Trail Use for the corridor, and ordered this proceeding be reopened and modified “to the extent necessary to implement interim use/rail banking . . . subject

to the future reactivation of rail service and to [WDNR's] continuing to meet the financial obligations of the right-of-way.”<sup>1</sup>

WDNR then acquired the corridor from UP on or near September 29, 1998. Since then, WDNR established a recreational trail. WDNR also conveyed parts of the corridor to Wisconsin Department of Transportation (“WisDOT”) for transportation purposes and the City of Oconto (“City”) for a rail line spur for the City’s industrial park, subject to rail service reactivation. The industrial spur was not constructed. Now, a private development party seeks to acquire that part of the corridor for business development from the City. The State of Wisconsin supports this effort because the proposed development and property transaction will facilitate the immediate expansion of three (3) long time and successful employers in the City of Oconto Industrial Business District, providing much needed economic stimulus to the area.

WisDOT, on behalf of WDNR, the City, the private developer and itself, approached UP to discuss the potential for restoration of rail service and the potential for abandonment. The parties agreed that rail restoration is not likely because business needs are not present or imminent. Furthermore, the continued rail banked status and potential for rail reversion of the corridor presents an impediment to highway and private development of the land within the corridor.

Therefore, based on communication and negotiations between WisDOT, WDNR, the City of Oconto, Wisconsin, UP and the private developer, WisDOT files this petition on behalf of WDNR. WDNR hereby provides notice that it intends to terminate the trail use pursuant to 49 C.F.R. §1152.29, and does respectfully request that the Board vacate the NITU and permit the

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<sup>1</sup> See *Union Pacific Railroad Company – Abandonment Exemption – In Oconto County, WI* (STB Docket No. AB-33 (Sub-No. 104x) (Served January 9, 1997).

line to be abandoned. WDNR may continue trail operations after the NITU is vacated. UP concurs with this Petition.

### **STATE RESPONSIBILITIES**

WisDOT is the designated state agency in rail matters in the State of Wisconsin. 49 U.S.C. Appx. § 1654(a) (formerly § 1654(j)), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats. WisDOT is responsible for all state and federally-aided highway construction and all state and federally-aided airport construction in Wisconsin. Secs. 84.01(2) and 114.32(1) and (5), Wis. Stats. WisDOT has the statutory first right to acquire for present or future transportation, recreational or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin. Sec. 85.09(2), Wis. Stats.

### **PETITION TO VACATE NOTICE OF INTERIM TRAIL USE**

WisDOT, on behalf of WDNR, respectfully requests that the Board terminate and vacate the outstanding NITU for the 8.3 -mile line of railroad, formerly the Oconto Falls Industrial Lead from Milepost 54.4, near Oconto, Wisconsin to the end of the line at milepost 46.1, near Stiles Junction, in Oconto County, Wisconsin, issued by the Board on January 9, 1997. UP concurs with this Petition.

### **EXPEDITED HANDLING REQUESTED**

WisDOT also requests that the Board issue its decision within 30-days of filing this Petition effective upon service so that the parties may complete property conveyances and begin construction on the new development as soon as possible.

All parties hope to complete the transaction and accomplish the objective development within the City of Oconto, and provide economic relief to the area as soon as possible. And,

WisDOT does not anticipate that this request will pose any new or unique policy issues for the Board or will generate any opposition.

**CONCLUSION**

WisDOT respectfully requests the Board vacate the NITU for the land corridor and related real property, for the 8.3 -mile line of railroad, formerly the Oconto Falls Industrial Lead from Milepost 54.4, near Oconto, Wisconsin to the end of the line at milepost 46.1, near Stiles Junction, in Oconto County, Wisconsin, issued by the Board on January 9, 1997.

WisDOT respectfully requests that the Board issue a decision within 30-days that permits the abandonment of the corridor.

Respectfully submitted,



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(608) 266-8752

Attorney for Petitioner  
Wisconsin Department of Transportation

Dated this 15<sup>th</sup> day of December 2014.

## CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing cover letter in regards to **AB33 (Sub-No. 104)**, by electronic mail or regular mail, pursuant to 49 C.F.R. §1104.12, this 12<sup>th</sup> day of December, 2014, on all parties of record on the service list.



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Kathleen Chung, Attorney  
State Bar no. 1032802  
Wisconsin Department of Transportation  
Office of General Counsel