

SERVICE DATE - AUGUST 21, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 262X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN  
FULTON AND PEORIA COUNTIES, IL

Decided: August 21, 2008

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 24.7-mile line of railroad on UP's Elm Industrial Lead from milepost 461.5, near Middle Grove, to milepost 486.2, at Molitor Junction, in Fulton and Peoria Counties, IL. Notice of the exemption was served on July 23, 2008, and published in the Federal Register on July 28, 2008 (73 FR 43823). The exemption was scheduled to become effective on August 22, 2008, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by August 4, 2008.

On July 31, 2008, Keokuk Junction Railway Co. (KJRY) filed a formal expression of intent to file an OFA to purchase UP's line proposed for abandonment. This filing automatically stayed the effective date of the exemption for 10 days, until September 2, 2008.<sup>1</sup> In the filing, KJRY requested that UP provide it with the information set forth in 49 CFR 1152.27(a), including the minimum purchase price required to acquire the line. KJRY also requested that UP provide the most recent report on the physical condition of the line and traffic, revenue and other data necessary to determine UP's estimate of net liquidation value (NLV) of the line, with supporting data reflecting available real estate appraisals, assessments of quality and the quantity of track material in the line.<sup>2</sup>

KJRY also requested that the Board toll the time period for submitting its OFA for an additional 30 days (presumably pursuant to 49 CFR 1152.27(c)(2)(ii)(C)) in order to provide KJRY with an adequate opportunity to review and analyze the material to be provided by UP. An extension of the OFA filing deadline is warranted and will be granted. Accordingly, the due date for KJRY to submit an OFA will be extended to September 22, 2008, and the effective date of the exemption will be extended until October 2, 2008.

On August 8, 2008, V and S Railway, LLC (VSR), a Class III railroad, filed a petition for leave to late-file its notice of intent to file an OFA, as well as a formal expression of intent to file

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<sup>1</sup> See 49 CFR 1152.27(c)(2)(i).

<sup>2</sup> KJRY simultaneously served the notice of intent on UP.

an OFA to purchase UP's line proposed for abandonment.<sup>3</sup> In its filing, Counsel for VSR states that he was out of the office and did not return until August 4, 2008, the due date for filing an expression of intent to file an OFA. Because UP has not objected, VSR's late-filed notice of intent will be accepted and its OFA will also be due on September 22, 2008.

On July 8, 2008, The Illinois Department of Natural Resources (IDNR) filed a request for the issuance of a 180-day public use condition under 49 U.S.C. 10905 and notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29.

IDNR requests that UP be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, for a 180-day period from the effective date of the abandonment exemption. IDNR explains that the rail corridor provides a direct connection to the greater Peoria metropolitan area and bike trail system as well as with the communities of Hanna City and Farmington and is identified as a potential rail-trail conversion in both the Peoria and Fulton County Greenways Plan. IDNR states that the corridor provides important wildlife habitat and open space and its preservation as a recreational trail is consistent with those purposes. IDNR also requests that UP be prohibited from removing or destroying trail-related structures such as bridges, trestles, culverts, and tunnels. IDNR states that it needs the 180-day period to assemble or review title information, complete a trail plan, and commence negotiations with the carrier.

IDNR 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 potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and has acknowledged that use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). 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). IDNR has satisfied these requirements for both a public use condition and a NITU, and therefore, imposition of both would be appropriate commencing with the effective date of the exemption. However, an OFA takes priority over the requests for a NITU or for a

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<sup>3</sup> VSR simultaneously served the petition for leave to late-file and notice of intent on UP and KJRY.

public use condition. Therefore, issuance and effectiveness of a NITU and public use condition will be delayed until the OFA process has been completed. If an agreement is reached on sale of the line for continued rail service, public use and trail use conditions would be unnecessary and unavailable. If no agreement is reached on the OFA, the appropriate decision and notice of interim trail use or abandonment establishing the 180-day negotiating period will be issued.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 28, 2008. In the EA, SEA recommended that two environmental conditions be placed on any decision granting abandonment authority. First, SEA noted that the National Geodetic Survey (NGS) had identified four geodetic station markers that may be affected by the proposed abandonment. Accordingly, SEA recommended that UP consult with the NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station marker.

Second, SEA noted that UP served its historic report on the Illinois Historic Preservation Agency (SHPO), pursuant to 49 CFR 1105.8(c), but that SEA had not heard from the SHPO. SEA, therefore, had not been able to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing on the National Register of Historic Places. Accordingly, SEA recommended a condition that UP: (1) be required to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed; (2) report back to SEA regarding any consultations with the SHPO, any other section 106 consulting parties that have been identified, and the public; and (3) not be allowed to file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

Comments to the EA were due by August 12, 2008. UP sent to the Board a copy of a letter dated June 25, 2008, in which the SHPO states that no historic properties will be affected by the proposed abandonment. Based on the information provided by the SHPO, SEA, in a Post-EA dated August 14, 2008, now recommends that the section 106 conditions not be imposed. Accordingly, only the condition requiring UP to notify and consult with NGS is recommended and will be imposed.

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 time period for offerors to file an OFA is tolled for 30 days until September 22, 2008.
3. VSR's petition for leave to late-file its notice of intent to file an OFA is granted, and VSR's late-filed notice of intent to file an OFA is accepted.
4. The requests for issuance of a notice of interim trail use and a public use condition are held in abeyance pending completion of the OFA process.
5. If the OFA process terminates, a decision effective on its service date will be issued to impose the interim trail use and public use conditions.
6. The effective date of the exemption is postponed until October 2, 2008.
7. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the condition that UP shall consult with the NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.
8. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary