

SERVICE DATE – MARCH 11, 2020

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 321X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
SHEBOYGAN COUNTY, WIS.

Decided: March 10, 2020

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon rail service over an approximately 1.3-mile portion of the Sheboygan Old Main Line, from milepost 148.2 to milepost 149.5, in the City of Sheboygan, Sheboygan County, Wis. (The Line). Notice of the exemption was served and published in the Federal Register on November 25, 2019 (84 Fed. Reg. 64,948). The exemption became effective on December 25, 2019.

By decision served on December 23, 2019, the Board imposed two environmental conditions recommended by the Board’s Office of Environmental Analysis. The decision also denied a request for issuance of a notice of interim trail use or abandonment (NITU) filed by the Wisconsin Department of Transportation (WisDOT) on behalf of Sheboygan County under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, due to the significant passage of time—more than five and a half years—since Sheboygan County’s statement of willingness was executed.

On February 13, 2020, WisDOT filed a new request on behalf of the City of Sheboygan¹ for the issuance of a NITU to negotiate with UP to establish interim trail use and rail banking under the Trails Act.² Pursuant to 49 C.F.R. § 1152.29, WisDOT also submitted a statement of willingness by the City of Sheboygan to assume financial responsibility for the right-of-way, which included an acknowledgement that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on February 20, 2020, UP notified the Board that it is willing to negotiate an agreement for interim trail use with WisDOT and the City of Sheboygan.

¹ WisDOT states that, after reaching out to representatives of Sheboygan County to discuss the execution of a new statement of willingness, it learned that the City of Sheboygan would instead be the party to assume financial responsibility of the right-of-way.

² In Abandonment & Discontinuance of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests for interim trail use/railbanking after the due date when good cause is shown. Because there is no indication that the late-filed request will prejudice any party, it will be accepted.

Because the request complies with the requirements of 49 C.F.R. § 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the one-year period prescribed below.³ If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) & (h). If no agreement is reached within one-year, UP may fully abandon the Line, subject to any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on November 25, 2019, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the parties to negotiate for trail use for the rail line, for a period of one year from the service date of this decision and notice, until March 11, 2021.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) 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 possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 3 above.
5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).
6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use

³ Effective February 2, 2020, the Board has modified its rules regarding the number and duration of, and standard for granting, extensions of the NITU negotiating period (as well as the duration of the initial NITU negotiating period). See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019).

agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by March 11, 2021, for the right-of-way, interim trail use may be implemented. If no agreement is reached, UP may fully abandon the Line, subject to any outstanding conditions.

8. This decision and notice is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.