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SERVICE DATE - DECEMBER 23, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 115X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN WAUKESHA COUNTY, WI

Decided: December 19, 1997

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuance of Service and Trackage Rights to abandon and discontinue service over a 1.40-mile line of railroad on the Waukesha Industrial Lead from milepost 18.16 to the end of UP's line at milepost 19.56 (Grand Avenue), near Waukesha, in Waukesha County, WI. Notice of the exemption was served and published in the Federal Register on November 26, 1997 (62 FR 63216-17). The exemption is scheduled to become effective on December 26, 1997.

By petition filed December 1, 1997, the Wisconsin Department of Transportation timely filed a request for the issuance of a notice of interim trail use (NITU) for the City of Waukesha (WKSH) to negotiate with UP to acquire and use the entire right-of-way for interim bicycle, pedestrian or other trail use purposes and rail banking pursuant to 16 U.S.C. 1247(d). WKSH submitted a statement indicating its willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29, and acknowledging that the use of the right-of-way as a trail is subject to future reactivation for rail service. In a reply filed December 8, 1997, UP indicated its willingness to negotiate with WKSH for interim trail use.

Based on UP's willingness to enter into negotiations with WKSH, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within 180 days, UP may fully abandon the line. See 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on November 26, 1997, 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, until June 24, 1998.

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 June 24, 1998, 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.

Vernon A. Williams
Secretary

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