

SERVICE DATE – FEBRUARY 14, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 327X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT AND DISCONTINUANCE
OF SERVICE EXEMPTION—IN CERRO GORDO COUNTY, IOWA

Decided: February 13, 2018

On October 12, 2017, Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuance of Service to abandon a 2.0-mile portion of UP’s Rockwell Industrial Lead in Mason City, Iowa, between milepost 155.5 near Elm Street and milepost 157.5 near 19th Street (the Line). Notice of the exemption was served and published in the Federal Register on November 1, 2017 (82 Fed. Reg. 50,729).¹ The exemption became effective on December 1, 2017.

On November 13, 2017, M&StL Group, LLC (MSL), a noncarrier, filed a notice of intent to file an offer of financial assistance (OFA) to purchase the Line. By a decision served on November 20, 2017, the notice of intent was rejected because it did not meet the Board’s requirements under 49 C.F.R. § 1152.27(c)(2)(i). On November 28, 2017, MSL filed an appeal of the Director’s decision. On January 26, 2018, the Board granted MSL’s appeal, found MSL preliminarily financially responsible, and set a deadline of February 15, 2018, for MSL to file its OFA.

On February 8, 2018, MSL timely petitioned to toll the OFA filing deadline, stating that UP had not yet provided the OFA-related information MSL had requested under 49 C.F.R. § 1152.27(a). MSL Pet. to Toll 1. MSL states that UP does not oppose the petition. Id.

The Board considers requests to toll the period for filing an OFA when a railroad has failed to provide a potential offeror with the information necessary to the development of an OFA and that information is not contained in the notice of exemption. See 49 C.F.R. § 1152.27(c)(2)(ii)(C). Here, because the information necessary to formulate the OFA has not

¹ On October 16, 2017, the City of Mason City, Cerro Gordo County, and the Iowa Natural Heritage Foundation (Trail Use Applicants) filed a request for a public use condition and a notice of interim trail use. On November 6, 2017, the Board’s Office of Environmental Analysis served an Environmental Assessment. On November 29, 2017, the Board reopened the proceeding and modified the November 1, 2017, exemption notice by issuing a Notice of Interim Trail Use or Abandonment to allow the Trail Use Applicants to negotiate with UP for interim trail use for the Line under the National Trails System Act, 16 U.S.C. § 1247(d), until May 28, 2018.

yet been provided to a potential offeror, MSL's petition will be granted. Accordingly, MSL's OFA will be due 10 days after UP notifies the Board in writing that it has provided MSL with the requested information and documentation.²

It is ordered:

1. MSL's petition to toll the OFA filing deadline is granted.
2. The due date for MSL to file its OFA is tolled until 10 days after UP notifies the Board in writing that it has provided MSL with the requested information.
3. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

² Although UP's exemption was effective on December 1, 2017, an interim trail use/railbanking condition was imposed on November 29, 2017. That condition and the OFA process here are barriers to consummation of the abandonment, and it is therefore not necessary to revoke or otherwise modify the exemption at this time. See Union Pac. R.R.—Aban. & Discontinuance of Service Exemption—in Cerro Gordo Cty., Iowa, AB 33 (Sub-No. 327X), slip op. at 5 n.7 (STB served Jan. 26, 2018).