

National Association of Reversionary Property Owners

(NARPO) IRS 501 (c)(3)

247316

110 Bellevue Way NE Ste. 8A PMB719
Bellevue, WA 98004
760-238-8420

ENTERED
Office of Proceedings
March 20, 2019
Part of
Public Record

March 20, 2019

The Honorable Cynthia T. Brown, Chief
Section of Administration Surface Transportation Board
395 E Street, SW, Ste. 1260
Washington, DC 20423-0001

Re: Docket No. AB 33 (Sub-No. 255) Abandonment Exemption
UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—IN CARVER AND
SCOTT COUNTIES, MINN

Dear Ms. Brown: Enclosed for filing in this docket please find the Reply of the National Association of Reversionary Property Owners (NARPO) to Union Pacific Railroad's (UP) March 20, 2019 Answer to NARPO's Petition to Reopen from February 27, 2019

As indicated by the attached certificate of service, I have served all persons who are listed as parties of record on the Board's service list for this proceeding. Should you have any questions concerning this matter, please do not hesitate to call me at the above number after 11:30am east coast time.

Very truly yours,

Richard Welsh, Executive Director, NARPO

BEFORE THE SURFACE TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—
IN CARVER AND SCOTT COUNTIES, MINN

DOCKET AB-33- (Sub No-255)

**NARPO's Reply to UP's Answer to the Petition to Reopen filed by
NARPO**

Background to the Petition

According to long established precedence by the STB and the federal courts, for a CITU or NITU to be valid and to stay valid, the rail line in the abandonment that is subject to a CITU or NITU must be connected to the National Rail System, see **RLTD Railway Corp. v. STB**, 166 F.3d 808, 814 (8th Circuit 1999). The rail line in AB 33-255 was stub ended at MP 33.0 in the City of Chasta, MN with no rail link to this stub end. The other end of the rail line was connected to the UP main line at MP 38.6, but UP consummated the abandonment of MP 38.6 to MP 38.0 on September 8, 2010. When the abandonment of the rail line segment from MP 38.6 to MP 38.0 was consummated by UP, the rest of the rail line was no longer connected to the National Rail System. Also see Footnote 3 directly below of the April 28, 2011 decision by Rachel D. Campbell, Director, Office of Proceedings;

“The original CITU included the entire right-of-way, extending from milepost 38.6 to milepost 33.0. In a CITU extension request filed on August 17, 2010, SCRRRA excluded the portion of the line from milepost 38.6 to milepost 38.0 from its CITU extension request. In a decision served on September 8, 2010, the Board authorized UP to fully abandon the portion of the right-of-way between milepost 38.6 and milepost 38.0, subject to meeting the outstanding conditions imposed in the April 2008 decision. By letter filed on September 8, 2010, UP stated that it has consummated the abandonment of that portion of the right-of-way.”

The Trail and the CITU have been severed from the National Rail System

On March 20, 2019 UP filed an Answer/Response to NARPO's Petition to Reopen. According to the UP answer, even though UP consummated the abandonment on September 8, 2010 from MP 38.6 to MP 38.0, UP now say that really didn't count as a consummation because they allegedly still store cars on the track although they provide no proof. Even if they store cars on the track from MP 38.6 to MP 38.0, does not mean they didn't consummated the abandonment between those MPs. Once consummation is filed with the STB, the line is severed from the National Rail System. Just because UP may have never has pulled up the rails and ties between MP 38.6 and MP 38.0 does not negate the consummation filed with the STB on September 8, 2010.

NARPO Did Meet the Standard for a Petition to Reopen

UP also claims that NARPO did not provide any new evidence or changed circumstances to qualify the Petition to Reopen. Obviously no one at the STB in 2010 was paying attention to the consummation of the line and the ongoing CITU that existed. If the STB had looked at the Mileposts and noted how they affected the CITU, something should have been done in 2010. NARPO is currently bringing this mistake on the STB's part to the STB attention which is changed circumstances and new evidence; albeit, evidence the STB missed eight and a half years ago.

Additional Analysis with Valuation Map

Attached is a copy of the UP Valuation Map number Minn 1-B, sub 5-5-B which shows a portion of the AB 33-255 from MP 38.6 to MP 38.0 and beyond. It is clear to see that at MP 38.0 there is no connection to the UP main line, and MP 38.0 is over 600 feet past the northern part of the connecting wye. That view is also clear in the map that UP supplied (Exhibit 1 and page 7) in their Answer to NARPO's Petition to Reopen dated March 20, 2019. UP puts on their map that it is still UP ownership from MP 38.0 to the connection to the UP main line, but that does not mean that it is still part of the National Rail system. That portion of the line was consummated and severed from the National Rail System.

UP also tries to make some sort of a case about some wording they put in the

Trail Use Agreement dated October 21, 2011 with Carver County concerning putting back the two bridges that UP removed. Now I don't know who UP is trying to convince that they would put back a 538 foot long bridge and build it 60 feet above the water of the Minnesota River plus another 84 foot bridge to gain access to 2.9 miles of possible railroad in two suburban cities. If anybody believes that, then NARPO has a nice bridge located between Brooklyn and Manhattan, New York for sale on a Quit Claim deed the railroads are famous for. Even if UP and Carver County signed an agreement with some such wording, that does not negate that the line is already severed at MP 38.0 and probably at MP 37.88 where the bridge over the Minnesota River was located and part of the consummation filing of September 10, 2010.

Conclusion

UP wants the STB to "carry out the Congressional directive" to "preserve established rail lines". UP could have preserved this rail line if they had wanted to. The only problem with the UP plead is UP consummated the abandonment in September 2010. Now no one held a gun to UP's head to write the letter of consummation and the destruction of at least two bridges, but UP must have had a good reason for doing so. But they cannot undo the consummation no matter how pretty they try and make the case. The STB should revoke the CITU in AB 33-255 as the area in the CITU is not now connected to the National Rail System, see *Jost v. STB* 195 F3d 79, 1999.

Hopefully UP did not try and take a corporate tax deduction under 26 CFR sec. 1.170A-1 as UP got caught by the IRS before for trying this tax deduction on a CITU. Maybe Carver County will have to rescind their donation letter to UP.

Service to Parties of Record

I certify on March 20, 2019 all parties of record of AB 33-255 have been notified of this filing via email or USPS mail. Karl Hansen-Leonard, Jeremy Berman-UP, Brian Skok-City of Carver, Dale Homuth-State of MN, Jim Ische-CCRRA, Mark Themig-Scott County, Martin Walsh—Carver County

Richard Welsh—Executive Director-NARPO

MERRIAM JUNCTION

7A 38.6

ADMAINE

MS
38.0

~~BRIDGE NO. 26~~