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SERVICE DATE – DECEMBER 23, 2019

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: December 20, 2019

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 is scheduled to become effective on December 25, 2019.

The Board's Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) on November 29, 2019, recommending that two conditions be imposed on any decision granting abandonment authority. In the EA, OEA noted that the Wisconsin Department of Transportation (WisDOT) submitted a comment encouraging the preservation of the transportation corridor, advising UP of Sheboygan County's interest in the corridor for trail use, and noting its view regarding UP's compliance with the *WisDOT Abandoned Railroad Line Salvage and Clean-up Policy/Standards/Procedures* when performing abandonment and related activities, including the coordination of efforts to restore state and local roadways. Accordingly, OEA recommended a condition requiring the railroad to consult with WisDOT prior to commencement of salvage operations and comply with WisDOT's reasonable requirements.

In its Environmental Report submitted to OEA, UP states that the proposed abandonment would not result in the discharge of wastewater or storm water and would not need a permit under Section 402 of the Clean Water Act (33 U.S.C. § 1342). In the EA, however, OEA noted that it had not received comments from the Wisconsin Department of Natural Resources (DNR) regarding the need for a permit under Section 402 and therefore recommended a condition requiring that UP consult with DNR prior to the commencement of salvage activities in order to determine whether a Section 402 permit, or other relevant DNR permit, is required.

OEA issued its final EA on December 20, 2019, noting that no new comments on the EA were received by the December 16, 2019 due date and recommending again that the two previously recommended conditions be imposed. Accordingly, based on OEA's recommendations, the conditions proposed in the EA and final EA will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On November 14, 2019, WisDOT filed a request on behalf of Sheboygan County for the issuance of notice of interim trail use or abandonment (NITU) to negotiate with UP to establish interim trail use and rail banking under the National Trails Systems Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, WisDOT included with its petition a statement of willingness by Sheboygan County to assume financial responsibility for the right-of-way, dated April 24, 2014, which includes an acknowledgment by Sheboygan County 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 and a map of the location.¹ In a response filed on November 19, 2019, UP notified the Board that it is willing to negotiate an agreement for interim trail use with WisDOT.

The Board will deny WisDOT's request for issuance of a NITU on behalf of Sheboygan County due to the significant passage of time—more than five and a half years—since Sheboygan County's statement of willingness was executed. If WisDOT were to seek issuance of a NITU in the future on behalf of Sheboygan County, WisDOT would need to submit a new statement of willingness, signed by an authorized representative of Sheboygan County.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ According to WisDOT, Sheboygan County intends to “use or preserve the land corridor and related real property for interim public transportation and recreational purposes (including highway, pedestrian, and other trail),” subject to restoration for railroad purposes. The Board has previously noted that, in fulfilling its role under the Trails Act, the Board does not authorize any use of a rail line that would not be “consistent with interim trail use and railbanking,” 49 C.F.R. § 1152.29(d). Soo Line R.R.—Aban. Exemption—in Racine Cty., Wis., AB 57 (Sub-No. 61X), slip op. at 2 (STB served Jan. 31, 2019) (stating that any approval of a NITU extension request referring to “interim highway” use should not be construed as approving such use).

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 subject to the conditions that UP shall: (a) consult with WisDOT prior to commencing salvage activities and comply with WisDOT's reasonable requirements; and (b) consult with DNR prior to commencing salvage activities in order to determine whether a Section 402 permit, or other relevant DNR permit, is required.
3. WisDOT request for issuance of a NITU is denied.
4. This decision is effective on its service date.

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