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OEA

SERVICE DATE – SEPTEMBER 15, 2020

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB-33 (Sub-No. 343X)

**The Union Pacific Railroad Company – Abandonment Exemption –
in Harris County, Tex.**

BACKGROUND

In this proceeding, Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Harris County, Texas. The rail line proposed for abandonment consists of two perpendicular segments and extends approximately 1.24 miles from milepost 0.98 to milepost 1.31 (within the Commerce Street right of way from near Bastrop Street to near Velasco Street) and from milepost 1.71 to milepost 2.62 (from near Sherman Street to near the Buffalo Bayou Hike and Bike Trail) (the Line). A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

The Line proposed for abandonment (known as the Houston Navigation Lead) is located in the City of Houston (Houston), with large sections of the right-of-way paved over within Commerce Street. The Line was constructed by the International Great Northern Railroad (IGN) and the San Antonio and Aransas Pass Railroad (SAAP). The segment of Line from MP 0.98 to MP 1.31 formed part of the IGN “Magnolia Branch” which was later leased to the Houston Belt and Terminal Railway (HBT). The segment of Line from MP 1.71 to 2.62 formed part of the SAAP “Eastern Extension.” The Line was used by prior railroads as a route through Houston to serve local industry but has not been needed since 1997 due to the UP/Southern Pacific (SP) merger and because UP obtained trackage rights over other HBT lines. The property surrounding the Line has been redeveloping for many years, and the last rail customer stopped shipping over the Line in 2016. There are no bridge structures on the Line, and the Line consists primarily of fee property. Based upon information in UP’s possession, the Line does not contain any federally granted rights-of-way.

ENVIRONMENTAL REVIEW

UP submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment of the Line, including salvage. UP served the E&H Report on a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. § 1105.7(b)]¹ implementing the National Environmental Policy Act. The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

According to UP, no local traffic has moved over the Line over the last two years, and there is no overhead traffic to be rerouted. Therefore, the proposed abandonment would not result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. Nor would the proposed abandonment adversely impact the development, use and transportation of energy resources or recyclable commodities or the transportation of ozone-depleting materials.

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way.

UP states that it intends to salvage the track material and sell the right-of-way to the Houston Greater East End Management District. According to UP, the salvage process would begin with the unbolting of the track materials or rails. With the use of specialized machinery placed on the railroad right-of-way, the rails and related steel (angle bars, tie plates, spikes, switches and any other metal parts) would be removed. Next the wooden ties would be raised from among the ballast with a tool designed for minimum disruption of the ground material. UP states that the ties would then be separated into three groups as follows: (1) good quality ties that would be reused in rail service, (2) landscape-quality ties that would be re-sold to lumber dealers for landscaping, and (3) scrap ties. Scrap ties would be loaded into truck trailers or containers and shipped by UP's contractor to an EPA approved disposal site or to a cogeneration plant.

UP states that culverts and right-of-way grading would remain intact so as not to alter the prevailing water flows along the Line. Ballast would typically be left in place but might be

¹ The E&H Report is available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records," selecting "Filings" in the "Search for" dropdown menu; entering AB-33 (Sub-No. 343X) sequentially in the four boxes for "Docket Number," then selecting "Search." The Report was filed on April 23, 2020.

removed if it is of exceptional quality – thus suitable for resale – to make the right-of-way more suitable for planned future use. According to UP, all road crossings would be removed and remediated, then resurfaced with gravel, asphalt or concrete, as required by the governing authority. Any railroad signals would also be dismantled and removed.

UP states that all salvage work for the abandonment would be performed by experienced rail material salvagers. The salvage contract would include detailed information on any environmental or historical conditions imposed by the Board should the Board authorize the proposed abandonment. According to UP, completed work would be independently inspected by a UP maintenance official to ensure compliance with UP standards of quality and all contractual obligations, including any Board imposed conditions, as applicable.

UP requested comments from the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment to protected wildlife, including federally listed threatened and endangered species. To date, USFWS has not provided comments. To identify protected species in the project area, OEA conducted a search of the USFWS Information for Planning and Conservation (IPaC) system.² Five protected threatened or endangered species, West Indian Manatee (*Trichechus manatus*), Least Tern (*Sterna antillarum*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), and Texas Prairie Dawn-flower (*Hymenoxys texana*), are located in the area of the proposed abandonment. According to the IPaC report, there is no critical habitat for these species in the project area. OEA has determined that these federally listed threatened or endangered species would not be affected because of the abandonment's limited scope of salvage and the urban nature of the project area. OEA is providing USFWS (Texas Coastal Ecological Services Field Office) a copy of this EA for its review.

According to UP, the Line proposed for abandonment is located within the Texas Coastal Zone, and UP has initiated consultation with the Texas General Land Office (TGLO). The TGLO has not completed its review of the proposed abandonment. Thus, OEA is recommending that a condition be imposed on any decision granting abandonment authority requiring UP to consult with the TGLO prior to beginning any salvage activities to determine whether state coastal management consistency certification is required. If consistency certification is required, the railroad shall be prohibited from performing any salvage activities until it obtains consistency certification and shall then notify OEA, pursuant to the Coastal Zone Management Act, 16 U.S.C. § 1451 *et seq.* and the Board's environmental regulations at 49 CFR § 1105.9.

OEA believes that any air emissions associated with abandonment activities would be temporary and would not have a significant impact on air quality. Similarly, any noise related to abandonment activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

² USFWS Information for Planning and Conservation (IPaC) search conducted on September 8, 2020 (<https://ecos.fws.gov/ipac/location/2K7LFHS4Q5DWBLRNV45V5A2BPU/resources>).

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to USFWS and TGLO for review and comment.

HISTORIC REVIEW

UP served the E&H Report on the Texas Historical Commission (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).³ OEA has not heard from the SHPO and therefore has not been able to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing on the National Register of Historic Places. Accordingly, OEA is recommending a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process. Guidance regarding the Board's historic preservation review process is available on the Board's website at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development's Tribal Directory Assessment Tool (TDAT) to identify federally recognized Tribes that may have ancestral connections to the project area.⁴ The database indicated that the following federally-recognized tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment: Alabama-Coushatta Tribe of Texas; Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Tonkawa Tribe of Indians of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma. Accordingly, OEA is sending a copy of this Draft EA to these Tribes for review and comment.

³ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. § 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found at a link on the bottom of the Board's website overseeing historic preservation at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

⁴ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat> (last accessed September 10, 2020).

CONDITIONS

OEA recommends that the following conditions be imposed on any decision granting abandonment authority:⁵

1. Pursuant to the Coastal Zone Management Act (16 U.S.C. § 1451 et seq.) and the Board's environmental regulations at 49 C.F.R. § 1105.9, Union Pacific Railroad Company (UP) shall consult with the Texas General Land Office and obtain state coastal management consistency certification, if necessary. UP may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until it reports the results of these consultations in writing to the Board's Office of Environmental Analysis and the Board has removed this condition.
2. Union Pacific Railroad Company (UP) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. UP shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the Texas Historical Commission and the public. UP may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the Line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

⁵ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with these conditions is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Board's Federal Register notice of the proposed abandonment. The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁶

TRAIL USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29). The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁷

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

As of March 17, 2020, all filings and other submissions should be submitted electronically through the Board's website at <https://prod.stb.gov>. To submit a comment on the Draft EA, select "File an Environmental Comment" under "Need Assistance?" on the Board's home page. Brief comments can be typed in the comment field provided, and lengthier comments can be attached as Word, Adobe Acrobat or other file formats. If you have any questions, please contact Alan Tabachnick by email at alan.tabachnick@stb.gov or by phone at 202-245-0367.

Date made available to the public: September 15, 2020.

⁶ Board decisions are available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records," selecting "Decisions" in the "Search for" dropdown menu; entering AB-33 (Sub-No. 343X) sequentially in the four boxes for "Docket Number," then selecting "Search."

⁷ Id.

Comment due date: September 28, 2020.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment

