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SERVICE DATE — OCTOBER 9, 2020

SURFACE TRANSPORTATION BOARD

DECISION

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

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN HARRIS
COUNTY, TEX.

Decided: October 8, 2020

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 1.24-mile portion of the Houston Navigation Lead, from milepost 0.98 to milepost 1.31 and from milepost 1.71 to milepost 2.62, in Harris County, Tex. (the Line). Notice of the exemption was served and published in the Federal Register on September 10, 2020 (85 Fed. Reg. 55,924). The exemption is scheduled to become effective on October 10, 2020.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on September 15, 2020, recommending that two conditions be imposed on any decision granting abandonment authority. OEA stated in its Draft EA that, according to UP, the Line proposed for abandonment is located within the Texas Coastal Zone. OEA further stated that UP has initiated consultation with the Texas General Land Office (TGLO), but that the TGLO has not completed its review of the proposed abandonment. Thus, OEA recommended 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. OEA recommended that, if consistency certification is required, the railroad be prohibited from filing its consummation notice or performing any salvage activities until it obtains consistency certification and notifies OEA and the Board removes the condition.

OEA also stated that UP served its historic report on the Texas Historical Commission (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). Because the SHPO had not responded to UP's historic report at the time the Draft EA was prepared, OEA was not able to consider the SHPO's opinion before determining if the Line may be eligible for listing on the National Register of Historic Places. Accordingly, OEA recommended a condition requiring UP 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 of the National Historic Preservation Act, 54 U.S.C. § 306108.

OEA issued its Final EA on October 5, 2020, noting that no comments on the Draft EA were received by the September 28, 2020 due date and again recommending that the two previously recommended conditions be imposed.

Accordingly, based on OEA's recommendations, the conditions proposed in the Final EA will be imposed.

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.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on September 10, 2020, exempting the abandonment of the Line described above is subject to the following conditions:¹
 - (a) 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, UP shall consult with the TGLO 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 OEA and the Board has removed this condition.
 - (b) 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 OEA regarding any consultations with the SHPO 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.

3. This decision is effective on its service date.

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

¹ 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.