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SERVICE DATE – JULY 28, 2008

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 270X)]

Union Pacific Railroad Company—Abandonment Exemption—in Osborne and Smith Counties, KS

[STB Docket No. AB-486 (Sub-No. 5X)]

Kyle Railroad Company—Discontinuance of Service Exemption—in Osborne and Smith Counties, KS

Union Pacific Railroad Company (UP) and Kyle Railroad Company (Kyle) (collectively, applicants) have jointly filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for UP to abandon, and for Kyle to discontinue service over, a 12.4-mile portion of a line of railroad known as the Lenora Branch Line, extending between milepost 540.3, west of Downs, KS, and milepost 552.7, west of Portis, KS, at the end of the line, in Osborne and Smith Counties.¹ The line traverses United States Postal Service Zip Codes 67437, 67474, and 67638.

Applicants have certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no

¹ Applicants originally filed their verified notice of exemption on July 8, 2008, but filed a supplement to their notice on July 11, 2008, certifying applicants' compliance with the notice requirements of 49 CFR 1105.11.

formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on August 27, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

³ Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. The filing fee for an OFA increased from \$1,300 to \$1,500, effective July 18, 2008. See Regulations Governing Fees for Services Performed in Connection with

(continued . . .)

trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 7, 2008.

Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 18, 2008,⁴ with: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: (1) Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606; and (2) Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemptions are void ab initio.

Applicants have filed a joint combined environmental and historic report, which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 1, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal

(. . . continued)

Licensing and Related Services—2008 Update, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008), which amends 49 CFR Part 1002 of the Code of Federal Regulations.

⁴ Applicants note, however, that they do not believe that the line of railroad is suitable for other public purposes. Applicants also state that, if the abandonment is authorized, they may reclassify 2.7 miles of the line between milepost 540.3 and milepost 543.0 as side track for storage and staging.

Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by July 28, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: July 21, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary