

SERVICE DATE-AUGUST 6,2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 339X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN HARRIS  
AND CHAMBERS COUNTIES, TEX.

Decided: August 6, 2019

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 2.23-mile portion of the U.S. Steel Industrial Lead between milepost 2.4 in Baytown and milepost 4.63 at the east side of Cedar Bayou, in Harris and Chambers Counties, Tex. (the Line). Notice of the exemption was served and published in the Federal Register on July 8, 2019 (84 Fed. Reg. 32,510). The exemption is scheduled to become effective on August 7, 2019.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on July 12, 2019, recommending that five conditions be imposed on any decision granting abandonment authority. In the EA, OEA noted that, in 2017, it had prepared an EA for the abandonment of the Line in Docket No. AB 33 (Sub-No. 324X).<sup>1</sup> In that prior docket, OEA, in consultation with the Texas Historical Commission (SHPO), completed the four-step Section 106 process,<sup>2</sup> including defining the Area of Potential Effect (APE), identifying historic sites and structures in the APE, and, in concert with consulting parties, preparing and executing a Memorandum of Agreement (MOA). While examining the historic impact of abandoning the Line, OEA determined that a vertical lift rail bridge over Cedar Bayou, known as the Cedar Bayou Bridge, is a historic property and should be listed in the National Register of Historic Places (National Register). Section 106 requires that federal agencies consider alternatives or modifications to an undertaking to avoid, minimize, or mitigate adverse effects to historic properties. OEA has determined that, because there is no potential transportation use for the Cedar Bayou Bridge, either for rail transportation or as a trail, removal of the structure from its current location appears to be the only feasible option. To mitigate the adverse effects of removing the Cedar Bayou Bridge, on October 25, 2018, the parties executed an MOA that

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<sup>1</sup> UP previously obtained authority to abandon the Line but did not file a notice of consummation within the time period prescribed by 49 C.F.R. § 1152.29(e)(2). See Union Pac. R.R.—Aban. Exemption—in Harris & Chambers Cays., Tex., AB 33 (Sub-No. 324X) (STB served Mar. 29, 2017).

<sup>2</sup> The Board (through OEA) is responsible for considering the impacts of its decisions on historic sites and structures, pursuant to Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108.

stipulates the following mitigation measures: (1) recordation and documentation of the Cedar Bayou Bridge prior to removal of any portion of the bridge, including digital photographs, an architectural and historical narrative, and the reproduction of measured drawings; and (2) public dissemination of the historic documentation prepared on the bridge, including an article for public audiences.<sup>3</sup> OEA recommends that UP be required to comply with the terms of the MOA.

In the EA, OEA also stated that 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. USFWS submitted comments recommending that UP conduct a search of the USFWS Information, Planning and Conservation system to identify protected species in the project area. Based on the information provided by USFWS and OEA's independent review, OEA concluded that the Line is not located in or near critical habitat for any of the species identified in USFWS's letter and OEA's July 8, 2019 search. However, OEA recommends that, prior to undertaking the removal of the Cedar Bayou Bridge, UP be required to consult with USFWS regarding the potential for impacts to federally listed protected species related to the removal of the bridge and report the results of any consultation with the USFWS in writing to OEA.

OEA noted that the U.S. Army Corps of Engineers (the Corps) has not commented on the potential impact of the proposed abandonment to waterways and wetlands or the potential need for a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344). Although OEA believes that the removal of track, ties, and related material from the Line would not result in the discharge of any dredge or fill material into waters of the United States, including wetlands, OEA recommends that UP be required to consult with the Corps prior to removing the Cedar Bayou Bridge, to determine whether a Corps permit would be required under Section 404 of the Clean Water Act for the removal of the bridge, and to report the results of any consultation in writing to OEA.

OEA stated that the Corps cites its rules and regulations that suggest that the removal of the Cedar Bayou Bridge may require authorization from the United States Coast Guard (Coast Guard). Accordingly, OEA recommends that, prior to removing the Cedar Bayou Bridge, UP be required to consult with the Coast Guard to ensure its requirements are being followed for the removal of the bridge. UP shall report the results of all consultation with the Coast Guard in writing to the OEA.

In the EA, OEA also noted that its review has concluded that the Line is located within the Texas Coastal Management Program (TCMP) boundary. TCMP has not provided comments on the proposed abandonment. Accordingly, OEA recommends that, prior to beginning any salvage activities, including the removal of track, ties, and related materials, UP be required to consult with the Texas Land Commissioner, who administers the TCMP, to determine whether

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<sup>3</sup> OEA noted that the MOA was developed and executed under Docket No. AB 33 (Sub-No. 324X) but is applicable to this current docket, as all aspects of the earlier proceedings remain the same, other than the passage of time and subsequent expiration of the window for the consummation of the action.

state coastal management consistency certification is required, and to report the results of these consultations in writing to the OEA prior to beginning salvage operations.

OEA issued its final EA on July 31, 2019, noting that no comments to the EA were received by the July 29, 2019 due date and reiterating its recommendation that the five previously recommended conditions be imposed. Accordingly, the five conditions recommended by OEA in the EA and final EA will be imposed.

Based on OEA's recommendation, 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 July 8, 2019, exempting the abandonment of the Line described above is subject to the conditions that UP shall:

(a) comply with the terms of the MOA executed on October 25, 2018;

(b) prior to removing the Cedar Bayou Bridge, consult with the USFWS regarding the potential for impacts to federally listed protected species related to the removal of the bridge and report the results of any consultation with USFWS in writing to OEA;

(c) prior to removing the Cedar Bayou Bridge, consult with the Corps to determine whether a Corps permit would be required under Section 404 of the Clean Water Act for the removal of the bridge and report the results of any consultation with the Corps in writing to OEA;

(d) prior to removing the Cedar Bayou Bridge, consult with the Coast Guard to ensure that the Coast Guard's requirements are being followed for the removal of the bridge and report the results of all consultation with the Coast Guard in writing to OEA; and

(e) prior to beginning any salvage activities, including the removal of track, ties, and related materials, consult with the Texas Land Commissioner to determine whether state coastal management consistency certification is required and report the results of these consultations in writing to OEA.

3. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.