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SERVICE DATE – DECEMBER 1, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-57 (Sub-No. 58X)

SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY
COMPANY—ABANDONMENT EXEMPTION—
IN WAUKESHA AND MILWAUKEE COUNTIES, WI

Decided: November 30, 2009.

Soo Line Railroad Company d/b/a Canadian Pacific Railway Company (CPR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a line of railroad approximately 4,458 feet in length between milepost 94.04 +/- (southeast of Watertown Plank Road) and milepost 93.2 +/- (approximately 1,100 feet southeast of West Bluemound Road), in Waukesha and Milwaukee Counties, WI. Notice of the exemption was served and published in the Federal Register on November 2, 2009 (74 FR 56685-86). The exemption is scheduled to become effective on December 2, 2009.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 6, 2009. In the EA, SEA states that the National Geodetic (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment. Therefore, SEA recommends a condition requiring CPR to consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.

SEA also states in the EA that the U.S. Army Corps of Engineers' St. Paul District (Corps) has reviewed the proposed abandonment and has determined that a permit under section 402 of the Clean Water Act would not be required. However, because Underwood Creek and its tributaries and adjacent wetlands are located within the project area, the Corps has requested consultation before CPR performs any work, such as constructing access roads, staging areas, or disposal sites, beyond the foot print of the existing ballast and in the vicinity of any wetlands. Accordingly, SEA recommends that CPR consult with the Corps, as requested.

Additionally, SEA states in the EA that CPR has submitted an historic report to the Wisconsin Historical Society (the State Historic Preservation Office or SHPO) as required by 49 CFR 1105.8. In the report, CPR states that there are 2 bridges on the line that are 50 years old or older and that salvage operations will be limited to the removal of the tracks and track materials from these bridges. However, at the time the EA was served, the SHPO had not yet submitted comments in response to the historic report, and SEA had not been able to consider the SHPO's opinion before determining if the line meets the criteria for eligibility for inclusion in the National Register of Historic Places (National Register). Accordingly, in the EA, SEA

recommended that CPR be required 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) that are eligible for listing or listed in the National Register until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). SEA also recommended that CPR be required to report back to SEA regarding the results of any consultations with the SHPO and any other section 106 consulting parties, and that CPR not be allowed to consummate the abandonment 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.

Comments to the EA were due by November 23, 2009. SEA received a comment submitted by the SHPO, stating that there are no properties located within the project area that are listed in or eligible for listing in the National Register. No other comments were received. Therefore, it is not necessary to impose the section 106 conditions discussed above in this proceeding. Accordingly, the conditions recommended by SEA in the EA, as modified here, will be imposed.

Based on SEA'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 exemption for abandonment of the line described above is subject to the conditions that, prior to commencement of any salvage activities, CPR shall: (1) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers; and (2) consult with the Corps before performing any work, such as constructing access roads, staging areas, or disposal sites, beyond the foot print of the existing ballast and in the vicinity of any wetlands.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.