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OEA

SERVICE DATE – DECEMBER 2, 2011

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB-33 (Sub-No. 300X)

**Union Pacific Railroad Company—Abandonment Exemption—
in Pottawattamie County, Iowa**

Docket No. AB-414 (Sub-No. 6X)

**Iowa Interstate Railroad, LTD.—Discontinuance of Service Exemption—
in Pottawattamie County, Iowa**

BACKGROUND

On October 3, 2011, Union Pacific Railroad Company (UP) and Iowa Interstate Railroad, Ltd. (IAIS) jointly filed a petition under 49 U.S.C § 10502 seeking exemption from the provisions of 49 U.S.C. § 10903 to permit UP to abandon and IAIS to discontinue service over UP's railroad line known as the Chicago and Great Western Industrial Lead, between milepost 503.6 and milepost 504.05, a distance of approximately 0.45 miles, in Council Bluffs, Pottawattamie County, IA (Line). The petition also seeks approval from the Surface Transportation Board (Board) for the following actions involving trackage rights: 1) UP to abandon and IAIS to discontinue service over UP's connecting track from UP milepost 503.85 on the UP line to the end point at IAIS milepost 486.8, a distance of 400 feet (UP connecting track); 2) IAIS to discontinue its trackage rights over the Line and UP connecting track (IAIS trackage rights); and 3) UP to discontinue its overhead trackage rights over that portion of IAIS's mainline from IAIS milepost 486.8 to IAIS milepost 488.0, a distance of 1.2 miles (UP overhead trackage rights). A map depicting the Line in relationship to the area served is attached to this Environmental Assessment (EA).

OEA notes that in 2008, UP and IAIS previously petitioned the Board seeking approval to abandon and discontinue service over this very same Line and UP Connector.¹ The Board in a decision dated December 12, 2008 denied the joint petition, explaining that UP and IAIS had not adequately demonstrated the economic justification for the proposed abandonment and discontinuance. Instead, UP and IAIS based their arguments in favor of abandonment and

¹ On August 25, 2008, UP and IAIS jointly filed a Notice of Exemption (Union Pacific Railroad Company – Abandonment Exemption - in Pottawattamie County, IA., Docket No. AB 33 Sub No. 274X and Iowa Interstate Railroad, Ltd. - Discontinuance of Service Exemption - in Pottawattamie County, IA., Docket No. AB 414 Sub. No. 4X).

discontinuance on the fact that Red Giant Oil Company (Red Giant) and Midwest Walnut Company of Iowa (Midwest Walnut) could continue to receive service from IAIS over the Red Giant property, despite acknowledging that IAIS would have no common carrier obligation to provide such service (which means that service could end at any time without Board authorization and shippers would lose their regulatory remedies for service failures or inadequacies). In addition, UP and IAIS did not provide any details of an agreement or even discussions with the shippers regarding their proposed future service arrangements. Furthermore, UP and IAIS did not provide statements from Midwest or Red Giant to reflect their support for the abandonment and discontinuance.

According to UP, during the past 4 years, IAIS has been the sole provider of rail service for the only 2 shippers on the Line, Red Giant and Midwest Walnut. Red Giant produces a wide array of petroleum products, while Midwest Walnut produces walnut veneer and other fine hardwood lumber products.

UP states that during the base year—2010—Midwest Walnut received 6 carloads of lumber and UP anticipates similar carload activity from Midwest Walnut in the future. Red Giant has moved both inbound and outbound carloads of petroleum products. UP has submitted carload traffic from Red Giant, but asks that the data be kept confidential. The Red Giant carload data is well below the Board's thresholds for analysis at 49 C.F.R. 1105.7(e)(5). Moreover, should the Board approve the proposed abandonment and discountenance, none of Red Giant's rail traffic would be diverted to truck because it would continue to move over the same rail (albeit a private line owned by Red Giant rather than a UP rail line).

As noted above, if the Board should approve the abandonment and discontinuance, UP would sell the Line and UP Connector Track to Red Giant. Once the sale is complete, the Line as well as the UP Connector Track would become part of Red Giant's industrial facility and would be renamed the Red Giant/Midwest Walnut Industry Track and would be subject to permanent easement access for Midwest Walnut. IAIS would provide direct rail common carrier service to both shippers pursuant to its Industrial Track Agreements. UP states that approval of the proposed action and subsequent sale would provide Red Giant and Midwest Walnut control over their respective industrial facilities. Furthermore, because IAIS would continue to provide common carrier service over the Line and UP Connector, rail service would continue to be available to any potential customers in the area of the IAIS line.²

Removal of UP's and IAIS' common carrier interests associated with both the Line and the UP Connector Track would enable Red Giant to 1) finalize acquisition of the real property which constitutes the Line and the UP Connector Track thereby creating the Red Giant/Midwest Walnut Industry Track and 2) to modify and expand its operations as necessary subject to the

² UP has submitted copies of the following: 1) Settlement Agreement; 2) Mutual Release of All Claims; 3) Operating Agreement between Midwest Walnut and Red Giant; 4) Operating Agreement between IAIS and Red Giant; and 5) Operating Agreement between IAIS and Midwest Walnut.

permanent easement access for Midwest Walnut.

DESCRIPTION OF THE RAIL LINE

The topography surrounding the Line and UP Connector Track is generally level and passes through areas that are urban and industrial in nature. The width of the right-of-way of both the Line and UP Connector Track is 50 feet. Neither the Line nor the UP Connector Track contains any structures that are 50 years old or older. If the Board should approve this abandonment, UP would not engage in any salvage activities.

As stated above, the Line and the UP Connector Track are located on property that is under a purchase contract from UP to Red Giant and does not contain any federally granted rights-of-way or reversionary property. Furthermore, there is no passenger rail service moving over the Line. The Line and UP Connector Track traverse United States Postal Service Zip Code 51503 while the IAIS mainline traverses United States Postal Service Zip Codes 51503 and 51501.

UP notes that no other customers have received rail service over the Line during this time period and that overhead rail service is impossible because portions of the Great Western Industrial Lead were previously abandoned-- to the south in 1971 and to the north in 2000.

UP also states that the Line is not suitable for other public purposes including roads or highways, mass transportation, energy production or transmission, or recreational use. This is because, as discussed above, both the Line and the UP Connector Track are contractually obligated to be transferred to Red Giant.

In addition, the Line and the UP Connector Track are located in the City of Council Bluffs, IA, which is served by numerous local streets, interstate highways, other UP and IAIS lines, as well as lines of other railroads, including BNSF Railway Company and Canadian National Railway Company.

ENVIRONMENTAL REVIEW

UP submitted an Environmental Report jointly with IAIS that concludes that the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. UP served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Board's environmental rules (49 C.F.R. § 1105.7(b)).³ The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

² The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 33 (Sub-No. 300X).

Diversion of Traffic

As noted above, should the Board approve the abandonment and discontinuance, IAIS would continue to serve both Red Giant and Midwest Walnut and therefore no diversion of traffic to trucks or any other mode would occur. IAIS's mainline would connect to the Line via the UP Connector Track which would be controlled and owned by the shippers and is specifically included as part of the Red Giant/Midwest Walnut Industry Track.

In a letters dated July 13, 2011, from Midwest Walnut and August 23, 2011, from Red Giant, both parties state that they support the proposed abandonment and discontinuance and understand that each of their respective facilities would continue to receive rail service from IAIS. Moreover, IAIS would continue to have its direct physical connection to each facility which would be governed by its Industrial Track Agreements.

UP states that it believes that there would be no adverse effect on regional or local transportation systems or modes because IAIS would continue to serve Red Giant and Midwest Walnut. Furthermore, there would be no effect on the movement and/or recovery of energy resources, recyclable commodities or change in overall energy efficiency.

The Natural Resources Conservation Service states that it has no concern or comments regarding the proposed abandonment and discontinuance.

The U.S. Environmental Protection Agency (U.S. EPA), Region 7, has not yet responded to this proposed abandonment and discontinuance. However, the U.S. EPA did submit comments on the previous petition filed in 2008. In 2008, the U.S. EPA noted that its evaluation found no regulatory or remedial activity to be within the proposed abandonment's right-of-way. However, the U.S. EPA noted that the environmental legacies of railway operations can include, but not limited to, product spills, maintenance activities, wood preservative applications, etc. UP states that there are no known hazardous materials waste sites or sites where known hazardous material spills have occurred on or along the right-of-way. OEA will not recommend a condition here, given that no hazardous material waste sites are involved in this proceeding.

The U.S. Department of Commerce, National Geodetic Survey (NGS) also noted in comments it filed on the 2008 petition that there are no geodetic station markers located in the area of the proposed abandonment. Because the NGS has not responded to this current petition, OEA will add the NGS to the service list for this EA and specifically invite NGS's comments on this EA.

Based on all information available to date, OEA does not believe that salvage activities would cause significant environmental impacts.

HISTORIC REVIEW

In its Historic Report, UP states that the right-of-way of both the Line and the UP Connector Track is 50 feet wide and does not include any structures that are 50 years old or

older. Because the Line and UP Connector Track would be sold to Red Giant for creation of the Red Giant/Midwest Walnut Industrial Track, no salvage activities would take place.

According to UP, the Line was originally constructed in 1901 by the Mason City and Fort Dodge Railroad (MCFD). Construction of the line from Fort Dodge to Council Bluffs, a distance of 132.91 miles, began in August 1901 with rail service beginning January 1, 1904.

The MCFD was a subsidiary of the Chicago Great Western Railway Company. The purpose of the MCFD was to construct, acquire, and operate a railroad from a connection with the Chicago Great Western Railway Company's tracks at Hayfield, MN, southwest through the cities of Mason City and Fort Dodge, IA to Omaha, NE, and Sioux City, IA, with a branch line extending westerly from Olewein, IA to Clarion, IA. The MCFD owned and operated approximately 374 miles of rail line. The Chicago Great Western Railway Company was acquired by the Chicago Great Western Railroad Company on August 11, 1909.

The UP Connector Track was constructed in 2000. The Line and the UP Connector Track are located on property under a purchase contract from UP to Red Giant and does not contain any federally granted rights-of-way or reversionary property.

UP served the Historic Report as required by the Board's environmental rules (49 C.F.R. § 1105.8(a)) on the State Historical Society of Iowa (SHPO) pursuant to 49 C.F.R. § 1105.8(c). In a letter regarding the 2008 petition, the SHPO states that an opinion would be offered by August 13, 2008, only if it determines, among other considerations, that there is an adverse effect. To date, the SHPO has not filed a response stating that historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment.

The SHPO has not yet responded to the current petition. OEA spoke to the SHPO on November 22, 2011, and learned that the SHPO is awaiting on additional information to be submitted by UP before making its final determination. Accordingly, we are recommending a condition requiring the UP and IAIS to retain their respective interests 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 <http://www.stb.dot.gov/stb/environment/preservation.html>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have ancestral connections to the project area.⁴ The database indicated that the following 7 federally-

⁴ Native American Consultation Database, <http://home.nps.gov/nacd/> (last visited (continued . . .))

recognized tribes, may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment:

1. Iowa Tripe of Kansas and Nebraska
2. Iowa Tribe of Oklahoma
3. Omaha Tribe of Nebraska
4. Otoe-Missouria Tribe of Indians, Oklahoma
5. Sac & Fox Nation of Missouri in Kansas and Nebraska
6. Sac & Fox Nation, Oklahoma
7. Sac & Fox Tribe of the Mississippi in Iowa

Accordingly, OEA is sending a copy of this EA to the above mentioned 7 tribes for review and comment.

CONDITIONS

We recommend that 1 condition be imposed on any decision granting abandonment authority:

Union Pacific Railroad Company (UP) and Iowa Interstate Railroad, Ltd. (IAIS), shall retain their 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, 16 U.S.C. § 470f, has been completed. UP and IAIS shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the SHPO and the public. UP and IAIS 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 condition is imposed, that 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.

(. . . continued)
November 21, 2011).

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 4-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 Federal Register notice.

TRAILS 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).

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

If you wish to file comments regarding this Environmental Assessment, send original and 2 copies to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Troy Brady, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB 33 300X in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this Environmental Assessment, please contact Troy Brady, the environmental contact for this case, by phone at (202) 245-0301, fax at (202) 245-0454, or e-mail at Troy.Brady@stb.dot.gov.

Date made available to the public: December 2, 2011.

Comment due date: January 2, 2012.

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

Attachment