

SURFACE TRANSPORTATION BOARD

DECISION

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

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN  
OSBORNE AND SMITH COUNTIES, KS

Decided: September 5, 2008

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 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 (the line). Notice of the exemption was served and published in the Federal Register on July 28, 2008 (73 FR 43822-23).<sup>1</sup> The notice stated that the exemption would become effective on August 27, 2008, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by August 7, 2008.

On August 8, 2008, V and S Railway, LLC (VSR), a Class III railroad, late filed a formal expression of intent to file an OFA to purchase the line. VSR simultaneously filed a petition for leave to file 1 day late its notice of intent to file an OFA. By decision served on August 26, 2008, VSR's late-filed notice of intent to file an OFA was accepted into the record. This filing automatically stayed the effective date of the exemption for 10 days, until September 6, 2008.<sup>2</sup>

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on August 1, 2008. In the EA, SEA indicated that the Kansas State Historic Preservation Officer (SHPO) submitted comments stating that the stone trestle located at milepost 542.2 on the line may be potentially eligible for listing in the National Register of Historic Places (National Register). SEA also stated that the SHPO had requested additional information from UP. Accordingly, SEA recommended that UP be required to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register (generally, 50 years old or older) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. SEA also recommended that UP be required to report

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<sup>1</sup> The notice also embraced STB Docket No. AB-486 (Sub-No. 5X), Kyle Railroad Company—Discontinuance of Service Exemption—in Osborne and Smith Counties, KS, in which Kyle Railroad Company sought an exemption to discontinue service over the line.

<sup>2</sup> See 49 CFR 1152.27(c)(2)(i).

back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and that UP not be permitted to file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until completion of the section 106 process and removal of this condition.

SEA also indicated in the EA that it conducted a search of the Native American Consultation Database (Database) at <http://www.nps.gov/nacd/> to identify Federally recognized tribes that may have ancestral connections to the project area. According to SEA, the Database indicated that the Pawnee Nation of Oklahoma may have an interest in the proposed abandonment. According to SEA, a copy of the EA was sent to the Pawnee Nation for review and comment. No comments were received.

Comments to the EA were due by August 15, 2008. According to SEA, on August 20, 2008, UP submitted a letter, dated August 8, 2008, from the SHPO, in which the SHPO states that the rail line and associated track, trestles, and culverts are not eligible for listing in the National Register. Therefore, based on the information now provided, SEA has determined that the section 106 historic preservation condition is no longer necessary. Accordingly, the historic preservation condition will not be imposed and a Finding of No Significant Impact under 49 CFR 1105.10(g) will be made pursuant to 49 CFR 1011.7(b)(9).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Abandonment of the involved rail line will have no significant effect on the quality of the human environment and conservation of energy resources or on historic resources.
2. The effective date of the exemption in this proceeding is September 6, 2008.
3. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary