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SERVICE DATE - OCTOBER 3, 2002

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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-839 (Sub-No. 1X)]

Kiowa, Hardtner and Pacific Railroad Company—Abandonment Exemption—in Barber County,

KS

Kiowa, Hardtner and Pacific Railroad Company (KHP) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its entire 9.93-mile line of railroad between milepost 571.85 at Kiowa and milepost 581.78 at Hardtner, in Barber County, KS. The line traverses United States Postal Service Zip Codes 67070 and 67057.

KHP has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no 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 reports), 49 CFR 1105.8 (historic reports), 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.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10502(g), unless the evidence indicates the existence

of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R. Corp.–Abandonment, 354 I.C.C. 744 (1978); and Northhampton and Bath R. Co.–Abandonment, 354 I.C.C. 784 (1978). KHP proposes to abandon the entire line and go out of the railroad business. KHP does not appear to have a corporate affiliate or parent that could benefit from the proposed abandonment. Accordingly, labor protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 2, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 15, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 23, 2002, with: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423.

¹ 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 exemption's 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 exemption's effective date.

² Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

A copy of any petition filed with the Board should be sent to KHP's representative:

Karl Morell, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void ab initio.

KHP has filed an environmental 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 October 8, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1552. [Assistance for the hearing impaired is available through the Federal 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), KHP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by KHP's filing of a notice of consummation by October 3, 2003, 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: September 25, 2002.

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

Vernon A. Williams

Secretary