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SERVICE DATE – MAY 2, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-563 (Sub-No. 1X)

KANSAS EASTERN RAILROAD, INC.—ABANDONMENT EXEMPTION—  
IN BUTLER AND GREENWOOD COUNTIES, KS

Decided: May 1, 2008

Kansas Eastern Railroad, Inc. (KER), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments for KER to abandon a 44.5-mile line of railroad between milepost 438.5, at Severy, and milepost 483.0, near Augusta, in Butler and Greenwood Counties, KS. Notice of the exemption was served and published in the Federal Register on August 25, 1999 (64 FR 46471).<sup>1</sup>

By decision served on September 23, 1999 (September 1999 decision), the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to the conditions that KER shall: (1) consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers; (2) consult with the Kansas Department of Health and Environment in Topeka to determine if a permit is required under section 402 of the Clean Water Act, 33 U.S.C. 1342; and (3) retain its interest in and take no steps to alter the historic integrity of the Beaumont St. Louis and San Francisco Railroad Water Tank until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

By letter filed on January 16, 2007, the Kansas State Historical Society (State Historic Preservation Officer or SHPO) has indicated that the proposed abandonment would not adversely affect any property listed or eligible for listing on the National Register of Historic Places. Therefore, SEA recommends that the section 106 historic preservation condition be removed.

Accordingly, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

In a recently issued policy statement, the Board has stated that railroads should not file a notice of consummation for any part of the line until the historic review process has been

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<sup>1</sup> Various portions of the line have been the subject of Notice of Interim Trail Use requests under 49 CFR 1152.29 and the National Trails System Act, 16 U.S.C. 1247(d).

completed and the Board has removed the section 106 condition. The Board went on to state, however, that a railroad may, for good cause shown, make a request to file a notice of consummation for a portion of the line prior to formal removal of the section 106 condition, and that the Board will then consider whether to waive its no-partial-consummation policy. The Board recognized that in some cases there can be an overriding need for partial consummation and that partial consummation could be in the public interest. The Board cited an example where a portion of the line is needed to complete a highway project that is important to the community and the historic preservation condition applies only to another part of the line or to a structure that would not be disturbed by the highway project. See Consummation of Rail Line Abandonments That Are Subject to Historic Preservation and Other Environmental Conditions, STB Ex Parte No. 678, slip op. at 4 (STB served Apr. 23, 2008).

In this proceeding, by letter filed on May 2, 2000, KER notified the Board that it had exercised its authority to abandon the portion of the right-of-way between milepost 476.4 and milepost 476.65 and that it had entered into an agreement with the State of Kansas for the sale of that line segment, which was needed by the State for reconstruction of a highway. Apparently, that portion of the line did not contain any property listed in or eligible for listing in the National Register of Historic Places. This partial consummation was effected before the Board announced the policy regarding partial consummation and was evidently necessary to complete a highway project, which the Board has suggested may be an instance where it would allow partial consummation. In any event, with the removal of the historic preservation condition effective on the service date of this decision, any partial consummation concerns regarding on this line are moot.

This decision 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 section 106 historic preservation condition imposed in the September 1999 decision is removed. Conditions 1 and 2 imposed in the September 1999 decision remain in effect.

3. This decision is effective on its date of service.

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

Anne K. Quinlan  
Acting Secretary