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OEA**

SERVICE DATE – OCTOBER 29, 2021

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB 646 (Sub-No. 1X)

**Atlantic and Western Railway, Limited Partnership
–Abandonment Exemption –
In Lee County, N.C.**

BACKGROUND

In this proceeding, Atlantic and Western Railway, Limited Partnership (ATW), a class III railroad, is seeking exemption under 49 U.S.C. § 1152.50 from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Lee County, North Carolina. The rail line proposed for abandonment extends approximately 1.05 miles from milepost 2.71 to milepost 3.76 (the Line). The Line is located in an industrial and commercial area in the City of Sanford and is crossed by three local streets: Nash Street, Rosser Road and Broadway Road. A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). If the notice becomes effective, ATW would be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

According to ATW, the Line was constructed in 1903 by its predecessor, the Atlantic and Western Railroad Company and was used to move lumber and agricultural products, gravel, passengers, feeds, petroleum, fertilizer, and alcohol. ATW acquired the Line in 2005. ATW indicates that the right-of-way is generally 50 feet in width and aerial digital images show that the topography is relatively flat. ATW states that no streams or rivers are crossed by the Line. The Line traverses United States Zip Codes 27330 and 27332. Based on information in its possession, ATW indicates that the Line does not contain any federally granted rights-of-way. ATW states that it has entered into an agreement with the North Carolina Department of Transportation (NCDOT) to transfer the Line to NCDOT for rail banking and public use.

ENVIRONMENTAL REVIEW

ATW submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment of the Line, including abandonment-related salvage activities. ATW provided the E&H Report to a number of appropriate federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 C.F.R. §

1105.7(b)]¹ implementing the National Environmental Policy Act (NEPA).² The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

According to ATW, neither local rail traffic nor overhead traffic has moved on the Line since 2016. Therefore, the proposed abandonment would not result in the diversion of rail traffic to truck traffic that could result in significant impacts to the local transportation network. Nor would the proposed abandonment adversely impact the development, use and transportation of energy resources or recyclable commodities, or the transportation of ozone-depleting materials.

Salvage Activities

Impacts from abandonment-related salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way. ATW stated they intend to remove all of the track and associated track materials between milepost 2.71 and milepost 2.91. It will salvage and reuse the materials with the exception of the cross ties and ballast, which ATW will dispose of in accordance with its environmental policies as well as applicable regulations. ATW intends to leave the track and materials in place on the segment between milepost 2.91 and milepost 3.76.

In a letter dated August 9, 2021, the City of Sanford commented that it believes the proposed abandonment would not have a significant impact on the environment and added that it had no other concerns.

Land Use

The National Geodetic Survey (NGS) initially commented via email on July 9, 2021 that it conducted a search of its database and did not find any geodetic survey markers in the project area. NGS reaffirmed that finding in a follow-up email of September 14, 2021 in response to the adjusted milepost segments. Accordingly, no further consultation with NGS is recommended.

¹ The E&H Report is available for viewing on the Board's website at <https://www.stb.gov> by clicking "Search STB Records;" selecting "Filings" in the "Search for" dropdown menu; entering "AB" "646" "1" "X" sequentially in the four boxes for "Docket Number," then selecting "Search." The E&H Report was filed on September 13, 2021.

² Since sending the initial agency consultation letters of June 21, 2021, ATW made two adjustments to the milepost endpoints. As this warranted the need to re-notify the agencies, ATW sent follow-up letters dated September 13, 2021 indicating that milepost 2.60 on the west end of the Line had been adjusted to milepost 2.71, a decrease of 0.11 miles, and that milepost 3.71 at the eastern terminus had been changed to milepost 3.76, an increase of 0.05 miles. Most of the agency responses received to date reflect the original milepost designations and OEA will include any updated agency information in the Final EA.

In a letter date June 23, 2021, the Natural Resource Conservation Service (NRCS) commented that the proposed abandonment is not subject to an AD-1006 review because no farmland conversion would occur. NRCS added that the proposed abandonment is of limited scope and no ground disturbance is anticipated. Accordingly, no further consultation with NRCS is recommended.

Hazardous Materials/Spills

The North Carolina Department of Administration serves as the State Clearinghouse for NEPA reviews and forwarded comments from state resource agencies under SCH File # 21-E-0000-0930 as follows.

By letter dated July 23, 2021, the North Carolina Department of Environmental Quality (NCDEQ), Division of Environmental Assistance and Customer Service commented that eight contaminated sites had been identified within one mile of the proposed abandonment and provided a generic list of permits that may be required as a result of salvage activities. In a separate letter dated July 16, 2021, the NCDEQ's Division of Waste Management, Inactive Hazardous Sites Branch, Superfund Section recommended that site files be reviewed to further determine if any of the eight listed sites pose a potential risk of being disturbed as a result of ATW's salvage activities. As disturbance may cause releases to the soil and groundwater, the agency noted that further evaluation and the development of appropriate precautionary measures may be warranted. Accordingly, OEA is recommending a condition that would require ATW to consult with NCDEQ's Waste Management Division prior to conducting any salvage activities.

By letter dated July 7, 2021, the NCDEQ Division of Waste Management, Solid Waste Section commented that any waste generated during the salvage process should be beneficially reused or recycled where applicable, or otherwise disposed of at a solid waste management facility permitted by the Division of Waste Management. Accordingly, OEA is recommending that ATW also consult with NCDEQ's Division of Waste Management to determine the need for any waste-related approvals or permits prior to conducting any salvage activities.

Biological Resources

ATW requested comments from the U.S. Fish and Wildlife Service Raleigh Ecological Services Field Office (USFWS) regarding the potential impact of the proposed abandonment to protected wildlife, including federally listed threatened and endangered species. To date, USFWS has not provided comments. To identify protected species in the project area, OEA conducted a search of the USFWS Information for Planning and Consultation (IPaC) system.³ The data base revealed that two protected threatened or endangered species, the Cape Fear shiner (*Notropis mekistocholas*) and the harperella (*Ptilimnium nodosum*), as well as one candidate species, the monarch butterfly (*Danaus plexippus*). These species may be located in the area of the proposed abandonment. According to the IPaC report, there is no critical habitat for these

³ U.S. Fish and Wildlife Service, IPaC Information for Planning and Consultation Tool, <https://ecos.fws.gov> (last accessed October 13, 2021).

species in the project area. OEA has determined that these federally listed species would not be affected because the harperella is a plant that is native to riparian environments and the Cape Fear shiner is a freshwater fish indigenous to shallow streams of the Cape Fear River basin and, as previously indicated, the Line does not cross any streams or rivers. Additionally, OEA is of the opinion that the monarch butterfly would not be affected by the proposed abandonment because no critical habitat has been identified in the project area, and ATW has indicated that salvage would be of limited scope. OEA is providing USFWS Raleigh Ecological Services Field Office a copy of this Draft EA for its review.

Water Resources

In a July 27, 2021 email, the North Carolina Department of Coastal Management Program (NCDCM) stated the proposed abandonment does not have the potential to impact a coastal community because Lee County is not in a designated coastal zone. Accordingly, the proposed abandonment is not subject to the federal coastal zone consistency requirements of the Coastal Zone Management Act.

ATW requested comments from the U.S. Army Corps of Engineers (Corps) regarding the need for a Section 404 of the Clean Water Act (33 U.S.C. § 1344) permit if fill material is discharged or placed into any water bodies, including inland waterways as a result of salvage activities. To date, the Corps has not provided comments. However, OEA has reviewed aerial digital images of the area and believes a Corps permit is not necessary because there are no water features along the Line's right-of-way. OEA is providing the Corps' Wilmington District, Raleigh Regulatory Field Office with a copy of this Draft EA for review.

Air Quality and Noise

OEA believes that any air emissions associated with the limited salvage activities would be temporary and would not have a significant impact on air quality. Similarly, any noise related to salvage operations would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to the following agencies for review and comment: the U.S. Fish and Wildlife Service; the U.S. Army Corps of Engineers; and the North Carolina Department of Environmental Quality, Waste Management Division.

Historic Review

ATW submitted an historic report as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)] and served the report on the North Carolina Department of Natural and Cultural Resources (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. §

1105.8(c).^{4,5} Based on available information, in a letter dated July 14, 2021, the SHPO submitted comments stating that no 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). The SHPO reaffirmed that opinion in a follow-up letter of September 30, 2021 in response to the milepost adjustments.⁶

In a letter dated July 14, 2021, the SHPO determined there are no historic resources which would be affected by the project. The SHPO project identification for this consultation is ER Project # 21.1555. No further consultation is expected.

Pursuant to the Section 106 regulations of the NHPA at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register of Historic Places. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of Applicants' historic report, all relevant correspondence, and this Draft EA, which has been provided to the SHPO and made available to the public through posting on the Board's website at <https://stb.gov/>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development's Tribal Directory Assessment Tool (TDAT) to identify federally recognized Tribes that may have ancestral connections to the project area.⁷ The database indicated that there is one federally recognized tribe that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment. Accordingly, OEA is providing a copy of this Draft EA for review and comment to the Catawba Indian Nation.

CONDITIONS

OEA recommends that the following condition be imposed on any decision granting abandonment authority.⁸

⁴ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. § 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found at a link on the bottom of the Board's website overiewing historic preservation at <https://stb.gov/resources/environmental/historic-preservation-overview>.

⁵ Guidance regarding the Board's historic preservation review process is available on the Board's website at <https://stb.gov/resources/environmental/historic-preservation-overview>.

⁶ The SHPO project identification for this consultation is ER Project # 21.1555.

⁷ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat> (last accessed October 13, 2021).

⁸ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29

Prior to commencement of any abandonment-related salvage activities, Atlantic and Western Railway, Limited Partnership shall consult with the North Carolina Department of Environmental Quality, Waste Management Division to ensure that any concerns regarding the need for permits, proper waste handling and disposal, and potential contamination of the right-of-way are addressed.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended condition is imposed, abandonment of the Line would 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.

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 four-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 Board's Federal Register notice of the proposed abandonment. The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁹

TRAIL 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 notice of the petition for 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

were to be reached for the Line (or a portion thereof), compliance with this condition would not be required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

⁹ Board decisions are available for viewing on the Board's website at <https://stb.gov> by clicking "Search STB Records;" selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "646" "1" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

use of rights-of-way as trails (49 C.F.R. § 1152.29). The Federal Register notice is also issued as a Board decision and is available on the Board's website.¹⁰

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

As of March 17, 2020, all filings and other submissions should be submitted electronically through the Board's website at <https://stb.gov>. To submit a comment on the Draft EA, select "File an Environmental Comment" under "Need Assistance?" on the Board's home page. Brief comments can be typed in the comment field provided, and lengthier comments can be attached as Word, Adobe Acrobat or other file formats. If you have any questions, please contact Andrea E. Poole by email at Andrea.Poole@stb.gov or by phone at 202-245-0305.

Date made available to the public: October 29, 2021.

Comment due date: November 12, 2021.

By the Board, Danielle Gosselin, Acting Director, Office of Environmental Analysis.

Attachment

¹⁰ Id.



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Legend

— the Line

Note: Maps produced by the STB's Office of Environmental Analysis are based on information provided by the applicant and are for reference purposes only.



North Carolina