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SERVICE DATE – AUGUST 24, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-383 (Sub-No. 5X)

WISCONSIN & SOUTHERN RAILROAD CO. –  
ABANDONMENT EXEMPTION – IN MILWAUKEE COUNTY, WI

Decided: August 23, 2007

By petition filed on April 19, 2007, as supplemented on May 7, 2007, Wisconsin & Southern Railroad Co. (WSOR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an approximately 2.41-mile line of railroad, extending from milepost 94.35, east of N. 24th Street, to milepost 96.76, west of N. Richards Street, known as the Nut Line, in the cities of Milwaukee and Glendale, in Milwaukee County, WI. Notice of the filing was served and published in the Federal Register on May 21, 2007 (72 FR 28552). The Board will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

WSOR states that the Nut Line was originally constructed, owned, and operated by the Milwaukee Road, many of whose railroad assets were acquired by the Soo Line Railroad Company, now part of Canadian Pacific Railway (CPR). WSOR bought the Nut Line from CPR in 2000. WSOR states that it has received an attractive offer to buy part of the Nut Line's right of way, which would sever the continuity of the Nut Line.

According to WSOR, during the 7 years it has owned the line, it has served only 3 shippers. Most recently it has served only 2 shippers, Bliffert Northside Lumber (Bliffert) and Longview Fibre (Longview). According to WSOR, Longview has stopped using rail service. Bliffert remains on the Nut Line, but has moved very little traffic, consisting entirely of inbound carloads of pulpboard, lumber, and plywood. WSOR's traffic data show that WSOR delivered 34 carloads to Bliffert in 2005, 68 carloads in 2006, and 13 carloads in 2007 (through April 19). WSOR asserts that it has offered to construct a transloading dock for Bliffert and that Bliffert currently uses several trucking companies that operate in the area. According to WSOR, it incurred operating losses of \$32,830 in 2005, \$33,276 in 2006, and \$12,029 in 2007 (through April 19). WSOR also states that the Nut Line is in need of rehabilitation<sup>1</sup> and that the prospects of other shippers locating on the Nut Line are poor.

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<sup>1</sup> WSOR estimates that it would cost \$492,530 to rehabilitate the line to Federal Railroad Administration Class I track conditions.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of this transaction under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will foster sound economic conditions and encourage efficient rail management by relieving WSOR from the expense of retaining and maintaining a line that generates very little traffic and by allowing WSOR to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy would not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. The Nut Line is a stub-ended line with little or no potential for future traffic. Also, the sole shipper on the Nut Line has transportation alternatives and has not filed in opposition of the proposed abandonment. Nevertheless, to ensure that Bliffert is informed of our action, we will require WSOR to serve a copy of the decision on Bliffert within 5 days of the service date and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

WSOR has submitted a combined environmental and historic report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) on July 6, 2007, requesting comments by August 3, 2007. In the EA, SEA recommended that two conditions be imposed on any decision granting abandonment authority.

SEA stated in the EA that the Nut Line is located in Wisconsin's designated coastal zone, and that railroad abandonments are subject to Federal consistency review under Wisconsin's coastal zone management program. According to the Board's environmental rules at 49 CFR 1105.9, for any proposed action that is within a state coastal zone and subject to review under a state's coastal zone management plan, the railroad must certify that the proposed action is consistent with that state's coastal zone management plan. SEA, therefore, had recommended that a condition be imposed on any decision granting abandonment authority that WSOR be prohibited from performing any salvage activities until the Federal consistency certification and concurrence process is completed pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq. and the Board's environmental regulations at 49 CFR 1105.9. However, by letter dated June 26, 2007, and received electronically on July 9, 2007, the Wisconsin Coastal Management Program (WCMP) stated that it waives consistency review of the project. Therefore, SEA now recommends that no coastal zone management condition be included.

SEA also noted in the EA that it had not heard from the Wisconsin Historical Society (the State Historic Preservation Office, or SHPO) and therefore had not been able to consider the SHPO's opinion before determining whether the Nut Line may be potentially eligible for listing on the National Register of Historic Places. Accordingly, SEA had recommended a condition that WSOR: (1) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the right-of-way 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; (2) report back to SEA regarding any consultations with the SHPO and the public; and (3) not file its consummation notice or initiate any salvage activities until the Section 106 process has been completed. However, by correspondence dated July 19, 2007, and received electronically on July 20, 2007, the SHPO informed SEA that the proposed abandonment would have no adverse effect on historic properties. Therefore, SEA now recommends that no historic preservation condition be included.

No other comments to the EA were filed by the due date. Accordingly, no environmental or historic preservation conditions will be imposed. The proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

Although SEA has indicated in the EA that the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by WSOR of the above-described line, subject to the employee

protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

2. WSOR is directed to serve a copy of this decision on Bliffert Northside Lumber within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An Offer of Financial Assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by September 4, 2007, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on September 23, 2007. Petitions to stay must be filed by September 10, 2007, and petitions to reopen must be filed by September 18, 2007.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), WSOR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WSOR’s filing of a notice of consummation by August 24, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary