

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-303 (Sub-No. 27)

WISCONSIN CENTRAL LTD.–ABANDONMENT–
IN OZAUKEE, SHEBOYGAN AND MANITOWOC COUNTIES, WI

Decided: November 5, 2004

By decision and certificate of interim trail use or abandonment served on October 18, 2004, the Board granted authority to Wisconsin Central Ltd. (WCL), under 49 U.S.C. 10903, to abandon a 37-mile line of railroad, known as the Plymouth Line, extending from milepost 114.8 near Saukville to milepost 151.8 near Kiel in Ozaukee, Sheboygan and Manitowoc Counties, WI, subject to trail use, environmental and standard employee protective conditions. The decision and certificate was scheduled to become effective on November 17, 2004, unless an offer of financial assistance (OFA) was filed on or before October 28, 2004.

On October 27, 2004, the Wisconsin Department of Transportation (WisDOT) and Wisconsin & Southern Railroad Co. (WSOR) jointly filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 for WisDOT to purchase the assets of, and for WSOR to operate, the entire 37-mile Plymouth Line. By decision served on November 1, 2004, WisDOT and WSOR were found financially responsible, and the effective date of the decision and certificate was postponed to permit the OFA process to proceed.

On October 29, 2004, the Decatur Junction Railway Co. (Decatur Junction) filed a motion seeking a 30-day extension of the time for filing an OFA. Decatur Junction indicates that it previously filed a notice of intent to file an OFA and entered into negotiations with WCL to purchase the entire line. Decatur Junction claims that it has reviewed the written documentation provided by WCL, but has not had the opportunity to conduct a “hi-rail” inspection of the line and would like to do so before completing its offer and/or concluding negotiations. Decatur Junction asserts that the extension will benefit WCL by giving it the opportunity to negotiate the purchase with Decatur Junction and WisDOT.

Both WCL and WSOR have filed replies in opposition to Decatur Junction’s motion. WSOR urges the Board to reject Decatur Junction’s request as untimely. WCL does not agree that a grant of the extension request would benefit it, and asks that the requested extension be denied. WCL asserts

that granting the extension would prejudice WCL and the offerors that have complied with the Board's regulations by effectively delaying negotiations between WCL and those offerors. WCL also indicates that a grant could cause it to incur further obligation and expense in operating an unprofitable line already approved for abandonment. WCL notes that there were no outstanding Decatur Junction requests for information from WCL when Decatur Junction sought the 30-day extension.

Decatur Junction has not justified its extension request. The statute imposes strict time limits for the filing of an OFA. The Board has accepted a late-filed, competing OFA filed 2 days late where the abandoning carrier did not object and there was no delay in the OFA time limits. See Union Pacific Railroad Company—Abandonment Exemption—In Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X) (STB served Apr. 6, 1999). Here, Decatur Junction's request is opposed by WCL and would unreasonably delay the OFA process. The Board can toll the time for filing an OFA if the applicant carrier has not provided the offeror with required information. But the potential offeror must submit a petition requesting such relief no later than 5 days after the service date of the decision and certificate. 49 CFR 1152.27(c)(1)(i)(C). In this proceeding, that would have been October 22, 2004.

Decatur Junction has known about the proposed abandonment since at least August 16, 2004, when it filed a notice of intent to file an OFA and has had access to all necessary information in WCL's application to submit an OFA. It has also had ample time to arrange with WCL to inspect the line.

Accordingly, Decatur Junction's request for an extension of time to file an OFA will be denied.

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

It is ordered:

1. Decatur Junction's request for an extension of time to file an OFA is denied.
2. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary