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SERVICE DATE – APRIL 5, 2011

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 303 (Sub-No. 37X)

WISCONSIN CENTRAL, LTD.—ABANDONMENT  
EXEMPTION—IN MARATHON COUNTY, WIS.

Decided: April 1, 2011

Wisconsin Central, Ltd. (WCL) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 1.14 miles of rail line between mileposts 17.50 and 18.64, in Weston, Marathon County, Wis. On March 4, 2011, notice of the exemption was served and published in the Federal Register (76 Fed. Reg. 12,222-23). The exemption is scheduled to become effective on April 5, 2011.

The Board's Office of Environmental Analysis (OEA) issued an environmental assessment (EA) in this proceeding which was served on March 11, 2011. In the EA, OEA indicates that the National Geodetic Survey (NGS) has advised OEA that one geodetic station marker may be affected by the proposed abandonment. Therefore, OEA recommends a condition requiring WCL to notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.

OEA states that the Wisconsin Department of Transportation (WisDOT) sent a letter to WCL encouraging preservation of the rail corridor for future transportation use consistent with existing land use plans. WisDOT added that, upon abandonment, WCL must comply with WisDOT's existing salvage and cleanup standards and procedures during salvage operations and must ensure that surveying benchmarks, monumentation, and mapping information for the abandoned line is protected. OEA adds that WisDOT also stated that, upon abandonment, WCL must remove all rail, ties, and ballast at any state highway crossings, manage traffic during salvage operations at highway crossings, and restore any salvaged roads within WisDOT's jurisdiction. Accordingly, OEA recommends a condition requiring WCL to consult with WisDOT concerning any planned salvage operations along highway rights-of-way within WisDOT's jurisdiction.

Comments to the EA were due by March 28, 2011. OEA did not receive any comments. Accordingly, the conditions recommended by OEA in the EA will be imposed.

In the EA, OEA indicated that the right-of-way may be suitable for other public purposes such as rail banking and interim trail use following abandonment of the line. On February 28, 2011, the Wisconsin Department of Natural Resources (DNR), filed a request for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. § 1247(d),

and 49 C.F.R. § 1152.29, to enable it to negotiate with WCL for use of the line for interim trail use. DNR also has submitted a statement of willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on March 10, 2011, WCL indicates its willingness to negotiate with DNR for interim trail use and rail banking.

Because DNR's request complies with the requirements of 49 C.F.R. § 1152.29 and WCL is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, WCL may fully abandon the line, subject to the environmental conditions imposed in this decision and notice. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 C.F.R. § 1152.29(d)(2).

As conditioned, this action 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 notice served and published in the Federal Register on March 4, 2011, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking for a period of 180 days commencing from the April 5, 2011 effective date of the exemption (until October 2, 2011), and subject to the conditions that: (1) WCL shall consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers; and (2) prior to commencement of any salvage activities, WCL shall consult with WisDOT regarding the use of appropriate procedures when performing abandonment activities, including the removal of any highway rights-of-way under WisDOT's jurisdiction.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by October 2, 2011, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line, subject to the environmental conditions imposed in this decision and notice. See 49 C.F.R. § 1152.29(d)(1).

7. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.