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SERVICE DATE – JULY 13, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 303 (Sub-No. 39X)

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

Decided: July 12, 2012

Wisconsin Central Ltd. (WCL) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 6.8 miles of rail line extending from milepost 69.0 to milepost 62.2 in Manitowoc County, Wis. Notice of the exemption was served on June 11, 2012 and published in the Federal Register on June 14, 2012 (77 Fed. Reg. 35,751). The exemption is scheduled to become effective on July 14, 2012.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on June 19, 2012. In the EA, OEA states that the State of Wisconsin, Department of Natural Resources (WDNR) submitted comments on the potential impacts to various resources from the proposed abandonment. These resource areas include water quality, wetlands, 100 year floodplains, endangered or threatened species, wildlife sanctuaries or refuges, national/state parks or forests, coastal zone management, soil and natural resource conservation, regional/local land use plans, Section 402/404 permits, and waste demolition disposal. OEA recommends that a condition be imposed upon any decision granting abandonment authority requiring WCL to consult with WDNR regarding its concerns and comply with its reasonable requirements related to salvage.

OEA states that the National Geodetic Survey (NGS) identified seven geodetic station markers in the area of the proposed abandonment. Accordingly, OEA recommends that WCL consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

Comments to the EA were due July 6, 2012. No comments were received. Accordingly, the conditions recommended by OEA in the EA will be imposed.

In the EA, OEA also states that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On June 29, 2012, Wisconsin Department of Transportation (WisDOT) filed a request for the issuance of a notice of interim trail use (NITU) for the full right-of-way involved in this proceeding, to negotiate with WCL for acquisition of the line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. By response filed on July 2, 2012, WCL has indicated its willingness to negotiate with WisDOT for interim trail use.

Pursuant to 49 C.F.R. § 1152.29, WisDOT has submitted a statement of its willingness to assume financial responsibility for the line, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Because WisDOT'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 for the rail line during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012) (effective May 30, 2012). If no agreement is reached within 180 days, WCL may fully abandon the rail line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

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 on June 19, 2012, exempting the abandonment of the line described above, is subject to the conditions that WCL shall: (1) prior to commencement of any salvage activities, consult with WDNR and comply with its reasonable requirements related to salvage; and (2) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.
3. The request for a NITU, under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, is granted.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities described in ordering paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the rail line covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by January 9, 2013, interim trail use may be implemented. If no agreement is reached, WCL may fully abandon the line, subject to the environmental conditions imposed in this decision and notice. 49 C.F.R. 1152.29(d)(1).

9. This decision is effective on its service date.

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