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SERVICE DATE – FEBRUARY 22, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1077X

WIREFRASS CENTRAL RAILWAY, LLC—ABANDONMENT  
EXEMPTION—IN COFFEE COUNTY, ALA.

Digest:<sup>1</sup> This decision allows Wiregrass Central Railway, LLC to end its responsibility to provide rail service over an approximately 1.2-mile rail line in Coffee County, Ala. It also requires the railroad to keep certain railroad structures in place and sets a time period for it to negotiate with parties interested in turning the rail line into a recreational trail.

Decided: February 16, 2012

By petition filed on November 9, 2011, Wiregrass Central Railway, LLC (Wiregrass Railway) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon an approximately 1.2-mile rail line between milepost 820.0 and milepost 821.2 in Enterprise, Coffee County, Ala. (the Line). Notice of the petition was served and published in the Federal Register on November 29, 2011 (76 Fed. Reg. 73,776-77). On January 6, 2012, the Alabama Trails Commission (Alabama Trails) filed a request for issuance of a notice of interim trail use (NITU) to provide time to negotiate an agreement for interim trail use/rail banking and imposition of a public use condition. On January 17, 2012, Wiregrass Railway responded, indicating that it agrees to negotiate for interim trail use/rail banking with Alabama Trails. For the reasons discussed below, the Board will grant the exemption from 49 U.S.C. § 10903, thereby authorizing the abandonment, subject to public use, interim trail use, and standard employee protective conditions.

BACKGROUND

According to Wiregrass Railway, the Line was constructed by Alabama Midland Railroad and completed in 1898. Subsequently, the Line was acquired by CSX Transportation, Inc. (CSXT) through consolidation. Wiregrass Central Railroad Co., Inc. (WCRR) purchased the rail line from CSXT and began operating it in 1987. In April 2011, Wiregrass Railway

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

acquired from WCRR 21.2 miles of rail line, of which the Line is a part.<sup>2</sup> Wiregrass Railway asserts that there are no shippers on the Line, there has been no demand for service over the Line since Wiregrass Railway acquired it, and no local or overhead traffic has moved over the Line since 1987.<sup>3</sup>

In the petition now before us, Wiregrass Railway states that the proposed abandonment will allow it to avoid the costs associated with continued ownership of the Line. To restore the Line to Federal Railroad Administration Class I track standards, Wiregrass Railway states that it would need to invest significant funds, as the Line's track and materials had been removed by WCRR prior to its purchase. As a result, Wiregrass Railway contends that, as part of its capital expenditures, track and materials would need to be replaced on the Line. In addition to restoration of the Line, Wiregrass Railway claims an average annual maintenance cost for the Line of \$6,000.00 per mile. It also calculates that it would incur \$28,378.00 in opportunity costs if it is required to continue ownership and operation of the Line.

Wiregrass Railway contends that, in balancing the harm to it and interstate commerce against the harm to shippers and local interests, the balance clearly favors abandonment. Wiregrass Railway asserts that the proposed abandonment would have no effect on regional or local transportation systems and patterns and that there would be no diversion of traffic to other transportation systems or modes, as there has been no local or overhead traffic on the Line since 1987. Further, Wiregrass Railway states that there would be no effect on the movement and/or recovery of energy resources, recyclable commodities, or change in overall energy efficiency. As noted above, the track, ties, and other materials had been removed from the Line before Wiregrass Railway purchased it. Thus, Wiregrass Railway asserts that no salvage activities will take place. Wiregrass Railway asserts that it plans to sell the Line for interim trail use/rail banking pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).

## DISCUSSION AND CONCLUSIONS

Exemption from Section 10903. Under 49 U.S.C. § 10903, a rail line may not be abandoned without prior approval from the Board. 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.

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<sup>2</sup> The Board authorized the acquisition and operation in Wiregrass Central Railway, LLC—Acquisition & Operation Exemption—Wiregrass Central Railroad Company, Inc., FD 35489 (STB served Apr. 22, 2011).

<sup>3</sup> Although there has been no local or overhead traffic on the Line since 1987, the class exemption at 49 C.F.R. § 1152.50 is not available because Wiregrass Railway acquired the Line less than 2 years ago. See Tulare Valley R.R.—Aban. Exemption—In Kings & Tulare Cnty., Cal., 9 I.C.C.2d 1205 (1993).

Detailed scrutiny of Wiregrass Railway's proposal under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy in this case. There has been no demand for service over the Line since Wiregrass Railway acquired it and no local or overhead traffic has moved over the Line since 1987. By minimizing the administrative expense of the abandonment application process, an exemption will expedite regulatory action and reduce regulatory barriers to exit. See 49 U.S.C. §§ 10101(2) and (7). An exemption, therefore, will foster sound economic conditions and encourage efficient management by allowing Wiregrass Railway to avoid the costs associated with retaining the Line. See 49 U.S.C. §§ 10101(5) and (9). Other aspects of the rail transportation policy will not be adversely affected by the use of the exemption process.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because there are no active shippers on the Line and no local or overhead traffic has moved over the Line since 1987.<sup>4</sup> No party has filed in opposition to the proposed abandonment.

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its 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, the Board will impose the employee protective conditions set forth in Oregon Short Line—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979) (Oregon Short Line).

Environmental Review. Wiregrass Railway has submitted a combined environmental and historical report and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. § 1105.11. The Board's Office of Environmental Analysis (OEA) has examined the environmental and historical report, verified Wiregrass Railway's data, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA issued an Environmental Assessment (EA) in this proceeding on January 6, 2012. In the EA, OEA concluded that the potential environmental impacts of this proposal will not be significant and that no historic properties will be affected. OEA did not recommend that any conditions be imposed on any decision authorizing abandonment.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the project area. According to OEA, the Database indicated that there are 2 tribes that may have knowledge regarding properties of traditional religious and cultural significance

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<sup>4</sup> Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

within the right-of-way for the proposed abandonment. OEA sent a copy of the EA to these tribes for review and comment.<sup>5</sup>

Comments to the EA were due by February 6, 2012. No comments were received. Accordingly, no environmental or historic preservation conditions will be imposed. Based on OEA's recommendations the Board concludes that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Interim Trail Use. Alabama Trails, a government agency interested in the development of recreational trails, has filed a request for the issuance of a NITU for the Line under the Trails Act and 49 C.F.R. § 1152.29, to provide time to negotiate with Wiregrass Railway for acquisition of the right-of-way for use as a recreational trail and for rail banking. Alabama Trails has submitted a statement of willingness to assume full responsibility for the management of, for any legal liability arising out of the transfer or use of (unless 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, as required by 49 C.F.R. § 1152.29. Alabama Trails has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service. In a response filed on January 17, 2012, Wiregrass Railway states that it agrees to negotiate for an interim trail use/rail banking agreement with Alabama Trails.

Because Alabama Trails' request complies with the requirements of 49 C.F.R. § 1152.29 and Wiregrass Railway is willing to enter into interim trail use negotiations, we will issue a NITU for the Line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, Wiregrass Railway may fully abandon the Line, subject to the conditions imposed below. See 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.

Public use. Alabama Trails also has requested imposition of a public use condition under 49 U.S.C. § 10905. It requests that Wiregrass Railway be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that Wiregrass Railway be barred from removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment. Alabama Trails' justification for its request is that the corridor will make an excellent recreational trail and conversion of the property will be in accordance with state and local plans. Alabama Trails states that the 180-day period is needed to complete a detailed trail plan and to negotiate with Wiregrass Railway.

The Board has determined that persons who request a NITU under the Trails Act may also seek a public use condition under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-

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<sup>5</sup> The Database is at: <http://home.nps.gov/nacd/>. The identified tribes are the Eastern Band of Cherokee Indians of North Carolina and the Muscogee Nation of Oklahoma.

Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Rail Abans.). When the requirements for both conditions are met, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. Alabama Trails has met the public use criteria prescribed at 49 C.F.R. § 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) the justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the Line, commencing from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the Line for public use. If a trail use agreement is reached on a portion of the right-of-way, Wiregrass Railway must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, it should be noted that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to negotiate to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, Wiregrass Railway is not required to deal exclusively with Alabama Trails but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. § 10904. As stated in Rail Abans., 2 I.C.C.2d at 608, an offer of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations takes priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 C.F.R. § 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 C.F.R. § 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 C.F.R. § 1152.27(f). Finally, if the Line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

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 Wiregrass Railway of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line and the conditions that Wiregrass Railway shall: (1) be prohibited from disposing of the corridor (other than tracks, ties, and signal equipment) and from removing or destroying potential trail-related structures (such as bridges, trestles, culverts, and tunnels) for a 180-day period from the effective date of this decision and notice to enable any state or local government agencies, or other interested person, to negotiate the acquisition of the Line for public use; and (2) comply with the interim trail use/rail banking procedures set forth below.

2. 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 the management of, 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 the payment of any and all taxes that may be levied or assessed against, the right-of-way.

3. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the right-of-way.

4. 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.

5. If an agreement for interim trail use/rail banking is reached by August 20, 2012, interim trail use may be implemented. If no agreement is reached by that time, Wiregrass Railway may fully abandon the Line, provided the conditions imposed above are met. See 49 C.F.R. § 1152.29(d)(1). If an interim trail use/rail banking agreement is executed before August 20, 2012, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

6. An Offer of Financial Assistance (OFA) under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by March 2, 2012, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee of \$1,500. See 49 C.F.R. § 1002.2 (f)(25).

7. 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."

8. Provided no OFA has been received, this exemption will be effective on March 23, 2012. Petitions to stay must be filed by March 8, 2012. Petitions to reopen must be filed by March 19, 2012.

9. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), Wiregrass Railway 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 Wiregrass Railway's filing of a notice of consummation by February 22, 2013, 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 Elliott, Vice Chairman Mulvey, and Commissioner Begeman.