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SERVICE DATE - JUNE 18, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-540X

FOREST TRANSIT COMMISSION--ABANDONMENT  
EXEMPTION--IN FOREST AND FLORENCE COUNTIES, WI

Decided: June 15, 1998

On May 21, 1998, the Forest Transit Commission (FTC) filed a notice of exemption under 49 CFR 1152.50 Subpart F--Exempt Abandonments to abandon a 37.83-mile line of railroad between milepost 77.75 near Wabeno, WI, and milepost 115.2 near Tipler, WI, in Forest and Florence counties, WI.<sup>1</sup> FTC states that it expects to consummate the abandonment on July 10, 1998.

FTC is a governmental entity formed by the towns of Tipler and Long Lake, WI, and Forest County to acquire and operate part of an 89.4-mile branch line formerly owned by the Chicago and North Western Transportation Company (C&NW) that was abandoned in 1979.<sup>2</sup> Wisconsin law empowered counties and municipalities to acquire and operate transportation systems. The Wisconsin Department of Transportation (WISDOT), acting on behalf of FTC, acquired the line from C&NW on July 27, 1979. Under an agreement dated December 15, 1979, WISDOT transferred the line to FTC. On August 14, 1980, the Interstate Commerce Commission (ICC)<sup>3</sup> granted FTC authority to acquire and operate the Wabeno-Tipler line.<sup>4</sup> On May 3, 1989, FTC entered into an operating agreement and designated the Nicolet Badger Northern, Inc. (NBNI), a

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<sup>1</sup> The milepost designations would appear to indicate that the length of the line is 37.45 miles.

<sup>2</sup> Chicago and North Western Transportation Company--Abandonment Between Gillett, Oconto County, WI, and Scott Lake, Iron County, MI, Docket No. AB-1 (Sub-No. 40) (ICC served July 18, 1979).

<sup>3</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the ICC and transferred certain functions to the Surface Transportation Board (the Board). This decision relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

<sup>4</sup> Forest Transit Commission d/b/a Nicolet Badger Northern Railroad--Acquisition and Operation of a Line in Florence and Forest Counties, WI, Finance Docket No. 29247 (ICC served Aug. 14, 1980). In the decision, the length of the line is stated to be 37.79 miles.

wholly owned subsidiary of Great Lakes Central, Ltd., to provide freight service over the line.<sup>5</sup> On December 1, 1994, NBNI notified its customers that, due to financial reasons and a lack of freight business, NBNI would terminate service on the line between Wabeno and Tipler on December 30, 1994. According to FTC, because of NBNI's default, the rail assets of NBNI were surrendered to FTC on December 31, 1995, and no rail service has occurred on the line since that time.

The provisions of 49 CFR 1152 are inapplicable to property that is not subject to the Board's continuing jurisdiction. RLTD Railway Corporation--Abandonment Exemption--Between Rennie's Station and Hatch's Crossing in Leelanau County, MI, STB Docket No. AB-457 (Sub-No. 1X) (STB served Oct. 30, 1997), pending review in RLTD v. STB, U.S.C.A., 6th Cir. No. 96-4142. According to the record, the line of railroad that is the subject of the notice was acquired by WISDOT, on behalf of FTC, after it had been abandoned by C&NW and the ICC's jurisdiction over the line had terminated. Neither WISDOT nor FTC assumed a common carrier obligation to provide service upon the acquisition of the abandoned line. Wisconsin Cent. Ltd. v. Surface Transp. Bd., 112 F.3d 881 (7th Cir. 1997); Wisconsin Department of Transportation and East Wisconsin Counties Rail Consortium--Petition for Declaratory Order--Common Carrier Status of Certain Operations in the State of Wisconsin, STB Finance Docket No. 32717 (STB served Dec. 8, 1997). Because FTC did not operate the line after NBNI's default under the operating agreement, FTC did not subsequently become a common carrier subject to the Board's jurisdiction.<sup>6</sup> Therefore, the notice of exemption will be rejected for lack of jurisdiction over the property.

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

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<sup>5</sup> In the agreement, the line is described as extending between milepost 77.8 and milepost 115.59.

<sup>6</sup> Shortly after WISDOT acquired the line at issue here, the ICC exempted states from the need to obtain ICC approval for a state's acquisition of lines approved for abandonment by the ICC or a bankruptcy court when the abandonment had not yet been consummated. The ICC also concluded that, in these circumstances, a state would become a common carrier only if it operated the line it was acquiring. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 135-38 (1980).

It is ordered:

1. The notice of exemption is rejected.
2. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary