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SERVICE DATE – LATE RELEASE APRIL 8, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 303 (Sub-No. 36X)

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

Decided: April 8, 2011

This decision reopens the proceeding to remove the Section 106 historic preservation condition that was imposed in this proceeding.

Wisconsin Central Ltd. (WCL) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 1.92-mile line of railroad line extending from milepost 3.88, in the Village of Howard, Wis., to milepost 5.8, on the Oneida Tribe of Indians of Wisconsin Reservation (Oneida Reservation), in Brown County, Wis. The portion of the line between milepost 4.8 and milepost 5.8 is within the Oneida Reservation.

Notice of the exemption was served and published in the Federal Register on November 10, 2010 (75 Fed. Reg. 69,152). The exemption became effective on December 10, 2010.

By decision served on December 9, 2010 (December 2010 decision), the proceeding was reopened at the request of the Board's Office of Environmental Analysis (OEA), and the exemption was made subject to 3 salvage-related conditions and a historic preservation condition under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f. The decision also included a notice of interim trail use or abandonment (NITU) authorizing a 180-day period (until June 7, 2011) for the Wisconsin Department of Transportation (WisDOT), on behalf of the Wisconsin Department of Natural Resources, to negotiate a trail use agreement with WCL for the 0.92-mile segment of the line not within the Oneida Reservation (from milepost 3.88 in the Village of Howard, Wis., to milepost 4.80 at the border of the Oneida Reservation).

Because the line lies partly within the Oneida Reservation and partly outside it, OEA indicated that consultation with both the Oneida Tribe's Tribal Historic Preservation Officer (THPO) and the State Historic Preservation Officer (SHPO) is necessary to comply with Section 106 of the National Historic Preservation Act. As a result of consultations with the THPO and at the request of OEA, the proceeding was reopened by decision served on March 2, 2011, and the exemption was made subject to an additional salvage condition affecting the portion of the line within the Oneida Reservation between milepost 4.8 and milepost 5.8.

By letter filed on March 11, 2011, WisDOT indicates that removal of WCL's track at Packerland Avenue, in Green Bay, Wis., is necessary to a crossing removal project that is part of the WisDOT US 41/WIS 29 reconstruction project, which is subject to Federal Highway Administration (FHWA) oversight and a letting schedule. WisDOT states that, before the crossing removal project letting can proceed, WisDOT and WCL must execute certain agreements to remove the track, but, before it can execute those agreements, WCL must receive Board approval to remove the track. According to WisDOT, FHWA has undertaken the Section 106 process for the highway project. WisDOT states that, pursuant to 36 C.F.R. § 800.2(a)(2), the Board may designate FHWA as the lead agency in this Section 106 process and allow FHWA's findings to fulfill the collective responsibilities under Section 106. WisDOT therefore proposes in its letter that the Board consider adopting FHWA's Section 106 process and findings.

Following further consultation between OEA and WisDOT, however, OEA recommends, in lieu of adopting FHWA's Section 106 process, that the Section 106 condition imposed in the Board's December 2010 decision be removed. OEA states that it has received a formal opinion from both the SHPO and the THPO that, pursuant to 36 C.F.R. § 800.4(d)(1), the proposed abandonment would result in no historic properties being affected. Therefore, OEA proposes a finding of "no historic properties affected" for the abandonment action and recommends that the Board's Section 106 condition be removed. According to OEA, WisDOT concurs and requests that the Board's Section 106 condition be removed by April 18, 2011, to permit a contract award related to the highway reconstruction project to proceed.

Based on OEA's recommendation, the proceeding will be reopened and the previously imposed Section 106 historic preservation condition will be removed.

This decision 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 Section 106 historic preservation condition imposed in the December 2010 decision is removed.
3. This decision is effective on its date of service.

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