

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 303 (Sub-No. 41X)

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

Digest:¹ This decision allows Wisconsin Central Ltd. to end its common carrier obligation to provide freight rail service over approximately 0.23 miles of rail line in Neenah, Winnebago County, Wis.

Decided: November 20, 2013

By petition filed on August 2, 2013, Wisconsin Central Ltd. (WCL) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 0.23 miles of rail line, known as the Galloway Spur, extending from milepost 206.27 at Henry Street to the end of the line at milepost 206.50 near South Commercial Street in Neenah, Winnebago County, Wis. (the Line). Notice of the exemption was served and published in the Federal Register on August 22, 2013 (78 Fed. Reg. 52,235). The Board will grant the exemption subject to standard employee protective conditions.

BACKGROUND

WCL states that it will reclassify the Line as private industry track after abandonment and transfer it to Galloway Company (Galloway), the only shipper on the Line. According to WCL, Galloway, whose private track connects with the Line, supports the proposed abandonment and seeks to acquire the track to expand and redevelop its rail facilities to accommodate Galloway's future expansion and business growth. WCL further states that there is no reasonable possibility for the development of other rail traffic as this single track, stub-ended line serves only Galloway and terminates at its facility. Galloway will remain a rail-served property after the abandonment.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) 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

¹ 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).

shippers from the abuse of market power.

Detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP here. Galloway, the Line's only shipper, supports the abandonment. Galloway intends to acquire the track after the abandonment to expand and redevelop its rail facilities and to remain a rail-served property. By minimizing the administrative expense of the application process, an exemption in this case would minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). By abandoning the Line, WCL would accommodate the transportation needs of the sole remaining shipper on the Line, which should result in increased rail traffic for WCL in the future. Thus, an exemption would also help to ensure the development and continuation of a sound rail transportation system, foster sound economic conditions in transportation, and promote efficient railroad management, consistent with 49 U.S.C. §§ 10101(4), (5), and (9). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

We also find that regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power.² As explained earlier, the only shipper on the Line, Galloway, supports the proposed abandonment. Nevertheless, to ensure that Galloway is informed of our action, we will require WCL to serve a copy of this decision on Galloway so that it is received by the shipper within five days of its service date and to certify contemporaneously to the Board that it has done so.

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, we will impose on WCL the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979) (Oregon Short Line).

Environmental review. WCL has submitted environmental and historic reports with its petition 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 reports, verified the data they contain, and analyzed the probable effects of the proposed action on the quality of the human environment.

In an Environmental Assessment (EA) issued in this proceeding on October 18, 2013, OEA concluded that, as proposed, the abandonment of the Line would not significantly affect the quality of the human environment and recommended that no environmental conditions be

² Because we find that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed abandonment is limited in scope.

imposed on any decision granting abandonment authority.

Comments to the EA were due by November 18, 2013.³ No comments to the EA were filed. Accordingly, based on OEA's recommendation, we conclude that the proposed abandonment, if implemented, would not significantly affect the quality of the human environment or the conservation of energy resources.

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 WCL of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line.

2. WCL is directed to serve a copy of this decision on Galloway so that it is received within five days of this decision's service date and to certify contemporaneously to the Board that it has done so.

3. 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 December 2, 2013, 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 \$1,600. See 49 C.F.R. § 1002.2(f)(25).⁴

4. 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."**

5. Provided no OFA has been received, this exemption will be effective on December 20, 2013.

6. Petitions to stay must be filed by December 5, 2013. Petitions to reopen must be filed by December 16, 2013.

³ The environmental review process was delayed by the recent shutdown of the Federal government due to a lapse in appropriations. For that reason, the EA was not issued until October 18, 2013, and comments to the EA were not due until November 18, 2013.

⁴ Consistent with our precedent, and given the apparent lack of need for the Line by any shipper other than Galloway, any person seeking to file an OFA must provide evidence that there is some shipper other than Galloway that would make use of common carrier service. See, e.g., CSX Transp.—Aban. Exemption—in Washington Cnty., Md., AB 33 (Sub-No.727X) (STB served Oct. 24, 2013); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cnty., Iowa, AB 33 (Sub-No. 300X) (STB served Jan. 20, 2012); CSX Transp.—Aban. Exemption—in Chesterfield & Darlington Cntys, S.C., AB 55 (Sub-No. 703X) (STB served Jan. 19, 2011).

7. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), WCL 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 WCL's filing of a notice of consummation by November 20, 2014, 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 one-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 Begeman, and Commissioner Mulvey.