

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-303 (Sub-No. 22X)

WISCONSIN CENTRAL LTD.--ABANDONMENT
EXEMPTION--IN CALUMET AND BROWN COUNTIES, WI

Decided: January 18, 2001

By petition filed on October 2, 2000,¹ Wisconsin Central Ltd. (WCL) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903² to abandon a 12.6-mile line of railroad, known as the Hilbert-Greenleaf Line, extending from milepost 170.4 at Hilbert to milepost 183 at Greenleaf, in Calumet and Brown Counties, WI. The Wisconsin Department of Transportation (WisDOT),³ on behalf of the Wisconsin Department of Natural Resources (WisDNR),⁴ requests issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d). We will grant the exemption subject to environmental, trail use, and standard employee protective conditions.

BACKGROUND

WCL is a Class II rail carrier that operates approximately 2,000 miles of rail lines in the states of Wisconsin, Michigan, Illinois and Minnesota. It is a wholly owned subsidiary of Wisconsin Central Transportation Corporation.

¹ Notice of the filing was served and published in the Federal Register on October 20, 2000 (65 FR 63117).

² The October 20 notice stated that WCL's request for exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905 was not supported by any evidence and would not be considered. The exemption request as to section 10905 is moot in any event as no requests for public use conditions have been filed.

³ WisDOT is the designated state agency for rail matters in the State of Wisconsin. It has the statutory right to acquire for present or future transportation, recreational, or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin.

⁴ WisDNR is the lead state agency responsible for designating, acquiring, developing, and maintaining a system of state trails for public use.

There are two shippers located on the Hilbert-Greenleaf Line: Progressive Farmers Coop (Progressive) and Cornette Farm Supply (Cornette). WCL provides the following traffic data for these shippers: in 1998, Progressive shipped 36 cars on the line and Cornette shipped 101 cars; in 1999, Progressive shipped 43 cars on the line and Cornette shipped 106 cars; and from January 1 through September 28, 2000, Progressive shipped 26 cars on the line and Cornette shipped 63 cars. WCL states that it served each shipper with a copy of the petition and neither has indicated opposition to the proposed abandonment. According to WCL, Progressive is considering other arrangements for service and Cornette is considering relocating its facility off the line. There is no overhead traffic. After abandonment of the line, WCL intends to use salvageable track and materials for upgrading and maintaining its other rail lines.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. 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.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by permitting WCL to abandon the line and use its assets more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power because the shippers on the line do not object and are either considering relocating or making other arrangements for service. Nevertheless, to ensure that these shippers are informed of our decision, we will require WCL to serve a copy of this decision on them within 5 days of the service date and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our 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 the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

WCL has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the

human environment. SEA served an environmental assessment (EA) on December 1, 2000, and requested comments.

In the EA, SEA recommends that conditions be imposed on any decision granting abandonment authority to alleviate the concerns of the U.S. Department of Commerce, National Geodetic Survey (NGS), WisDNR and WisDOT. The first condition recommended by SEA addresses NGS's concerns and would require WCL to notify NGS not less than 90 days prior to commencement of any salvage operations that are expected to destroy or disturb geodetic station marker P-91. The second condition recommended by SEA addresses WisDNR's concerns and would require WCL to prepare a track salvage work plan, in compliance with WisDOT's Abandoned Railroad Line Salvage and Clean-up Policy/Standards/Procedures (WisDOT Procedures), with regard to the potential impact to surface water quality and wetlands resulting from abandonment activities. The recommended condition would also require WCL to consult with WisDNR regarding the work plan guidelines prior to consummation of abandonment activities. The third condition recommended by SEA addresses WisDNR's further concern that the rail line passes through Brillion State Wildlife Area and would require WCL, prior to conducting any salvage activities within the boundaries of the wildlife area, to consult with WisDNR and to take all steps necessary to keep such salvage activities to a minimum. The fourth and final condition recommended by SEA addresses WisDOT's concerns and also would require WCL to prepare a track salvage work plan in compliance with WisDOT Procedures. This work plan would require WCL to: (a) contact the appropriate maintaining authority to coordinate work efforts; (b) remove all rail, ties, and ballast from state at-grade crossings; (c) obtain a permit from the district maintenance section to perform work on the roadway right-of-way; (d) take appropriate measures to handle traffic while rail line materials are being removed from the at-grade crossings; (e) restore the roadway at-grade crossings in like kind; and (f) take all measures necessary to protect surveying benchmarks, monumentation, and mapping information for the rail line. The recommended condition would also require WCL to consult with WisDOT regarding the work plan guidelines prior to consummation of abandonment activities.

No comments to the EA were filed by the December 31, 2000 due date. Accordingly, we will impose the conditions recommended by SEA in the EA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources. Although SEA has indicated in the EA that the right-of-way may be suitable for public use under 49 U.S.C. 10905, as noted, no one has sought a public use condition, and none will be imposed.⁵

⁵ Public use requests were due no later than 20 days after publication of the notice in the Federal Register, or by November 9, 2000.

Also as noted, WisDOT, on behalf of WisDNR, requests issuance of a NITU for the right-of-way involved in this proceeding. Acquisition of the rail corridor would allow WisDNR to use the right-of-way for trail purposes. WisDNR has submitted a statement of willingness to assume financial responsibility for the right-of-way, and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. By letter filed on November 20, 2000, WCL states that it is willing to negotiate with WisDNR for interim trail use. Because WisDNR's request complies with the requirements of 49 CFR 1152.29 and WCL is willing to enter into 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 reached, no further Board action is necessary. If no agreement is reached within 180 days, WCL may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986), OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use process 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 WCL of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that: (1) if salvage operations are expected to destroy or disturb geodetic station marker P-91, WCL shall notify NGS not less than 90 days prior to commencement of such operations; (2) WCL shall prepare a track salvage work plan in compliance with WisDOT Procedures that addresses the potential impact to surface water quality and wetlands resulting from abandonment activities and consult with WisDNR regarding the work plan guidelines prior to consummation of abandonment activities; (3) WCL shall, prior to any salvage activities, consult with WisDNR and take all steps necessary to keep salvage activities to a minimum within the boundaries of the Brillion State Wildlife Area; and (4) WCL shall prepare a track salvage work plan in compliance with WisDOT Procedures that requires WCL to: (a) contact the appropriate maintaining authority to coordinate work efforts; (b) remove all rail, ties, and ballast from state at-grade crossings; (c) obtain a permit from the district maintenance section to perform work on the roadway right-of-way; (d) take appropriate measures to handle traffic while rail line materials are being removed from the at-grade crossings; (e) restore the roadway at-grade

crossings in like kind; (f) take all measures necessary to protect surveying benchmarks, monumentation, and mapping information for the rail line; and (g) consult with WisDOT regarding the work plan guidelines prior to consummation of abandonment activities; and (5) WCL shall comply with the interim trail use/rail banking procedures set forth below.

2. WCL is directed to serve a copy of this decision on Progressive Farmers Coop and Cornette Farm Supply within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached for the line, it must require the trail user to assume, for the term of the agreement, full responsibility for 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 for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. 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.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by January 29, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,000. See 49 CFR 1002.2(f)(25).

8. 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."**

9. Provided no OFA has been received, this exemption will be effective February 18, 2001. Petitions to stay must be filed by February 5, 2001, and petitions to reopen must be filed by February 13, 2001.

10. Pursuant to the provisions of 49 CFR 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 January 19, 2002, 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 Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary