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SERVICE DATE - OCTOBER 25, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-314 (Sub-No. 2X)

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN LINN COUNTY, IA

Decided: October 23, 2002

By petition filed on July 8, 2002,¹ Chicago Central & Pacific Railroad Company (CCP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a segment of the Marion-Louisa Industry Lead, extending from milepost ZA 225.7 to milepost ZA 229.5, a distance of approximately 3.8 miles in Linn County, IA. The City of Cedar Rapids, IA, and the City of Marion, IA, separately request a public use condition and issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). We will grant the exemption, subject to trail use, public use, and environmental conditions, and standard employee protective conditions.

BACKGROUND

CCP is a regional railroad operating over approximately 697 miles of road primarily in Iowa and Illinois and is part of the Canadian National/Illinois Central system. CCP states that there are only three customers that remain on the line—Marion Metal, Prince Agri Chem, and Linn Co-op. According to CCP, activity in 2001 consisted of four outbound carloads from Marion Metal, six inbound carloads to Prince Agri Chem, and no traffic associated with Linn Co-op. Petitioner adds that there has been no traffic on the line thus far in 2002. CCP further states that no operations or maintenance are currently conducted on the line, and that there is no need to keep the line for overhead traffic as the track dead ends at milepost ZA 225.7. Finally, CCP avers that track and materials from the abandonment that are salvageable will be used for upgrading and maintaining other active rail lines, and that the remaining material will be sold as scrap.

¹ Notice was served and published in the Federal Register on July 26, 2002 (67 FR 48968).

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued 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 CCP 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. Thus far in 2002, no local traffic has moved over the line and there is no overhead traffic. Moreover, the three shippers on the line have not objected to the abandonment.² Nevertheless, to ensure that these shippers are informed of our decision, we will require CCP to serve a copy of this decision on them within 5 days of the service date and to 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 set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

CCP has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local government 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 the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on September 6, 2002, and requested comments.

In the EA, SEA indicated that the City of Marion, the U.S. Environmental Protection Agency, Region VII, Environmental Services Division, the U.S. Department of Commerce's National Geodetic Survey (NGS), and the State Historical Society of Iowa have raised environmental concerns about the

² CCP states that each was served with a copy of the petition.

abandonment. Therefore, SEA recommended that the following environmental conditions be imposed on any decision granting abandonment authority: CCP shall (1) notify NGS 90 days prior to salvage activities in order to plan for potential removal of three geodetic station markers that may be affected by the proposed abandonment; (2) consult with the Iowa Department of Natural Resources regarding permitting requirements under section 402 of the Clean Water Act (i.e., stormwater permitting requirements); (3) consult with the City of Marion concerning potential brownfield issues prior to initiating abandonment activities; and (4) retain its interest in and take no steps to alter the historic integrity of the right-of-way until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407f.

No comments to the EA were filed by the October 4, 2002 due date. We will impose the conditions recommended by SEA. 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.

As noted, Cedar Rapids and Marion have separately requested interim trail use. They have submitted statements of willingness to assume financial responsibility for the right-of-way, and have acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. In letters filed on August 9, 2002, and September 9, 2002, respectively, CCP states that it is agreeable to a public use condition and that it intends to negotiate with both cities for a possible interim trail use agreement.³ Because the Cedar Rapids and Marion requests comply with the requirements of 49 CFR 1152.29 and CCP is willing to negotiate, we will issue a NITU. 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, CCP may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. Cedar Rapids and Marion have also requested that a 180-day public use condition be imposed, precluding CCP from: (1) disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels. The cities state that the subject rail corridor would make an excellent recreational trail and that conversion of the property to trail use is in accordance with local plans. They also state that these structures have considerable value for the

³ We note that, although CCP may negotiate with both cities for trail use, it may reach an agreement with only one over a particular segment of line.

corridor's intended public use.⁴ Cedar Rapids and Marion seek a 180-day period because of the need to put together a trail plan, commence negotiations with the carrier, and assemble and review title information.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonment—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. Cedar Rapids and Marion have met the public use criteria prescribed at CFR 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) justification for the period of time requested. Accordingly, a 180-day public use condition also will be imposed, commencing from the effective date of this decision and notice. If a trail use agreement is reached on a portion of the right-of-way, CCP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested persons 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, CCP is not required to deal exclusively with Cedar Rapids and Marion but may engage in negotiations with other interested persons.

The parties should note that the 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 Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1) for purchase or subsidy of the line, 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 and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use and public use negotiations 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 CCP of the above-described line, subject to the employee protective

⁴ Cedar Rapids adds that, because the corridor provides important wildlife habitat and greenspace, its preservation as a recreational trail is consistent with that end.

conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), the terms and conditions for implementing interim trail use/rail banking set forth below, and the conditions that CCP shall: (1) leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (but not track and track materials), for a period of 180 days 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; (2) notify NGS 90 days prior to salvage activities in order to plan for potential removal of the three geodetic station markers that may be affected by the proposed abandonment; (3) consult with the Iowa Department of Natural Resources regarding permitting requirements under section 402 of the Clean Water Act (i.e., stormwater permitting requirements); (4) consult with the City of Marion concerning potential brownfield issues prior to initiating abandonment activities; and (5) retain its interest in and take no steps to alter the historic integrity of the right-of-way until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407f.

2. CCP is directed to serve a copy of this decision and notice on Marion Metal, Prince Agri Chem, and Linn Co-op within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached, it must require the rail 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 the service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, CCP may fully abandon the line, provided the conditions imposed above are met.

7. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 4, 2002, 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 a \$150 filing fee. 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 November 24, 2002. Petitions to stay must be filed by November 12, 2002, and petitions to reopen must be filed by November 19, 2002.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), CCP 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 CCP's filing of a notice of consummation by October 25, 2003, 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 and Vice Chairman Burkes.

Vernon A. Williams
Secretary