

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-43 (Sub-No. 171X)

ILLINOIS CENTRAL RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN  
McLEAN COUNTY, IL

Decided: May 3, 2002

By petition filed on January 16, 2002,<sup>1</sup> Illinois Central Railroad Company (IC) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 3.08 miles of a line of railroad, known as the Heyworth Spur, extending from milepost 783.42 to the end of the line at milepost 786.5 in Heyworth, McLean County, IL. A request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by the Village of Heyworth (the Village).<sup>2</sup> We will grant the exemption, subject to trail use, public use, an environmental condition and standard employee protective conditions.

BACKGROUND

IC is a Class I rail carrier that owns and operates approximately 2,550 miles of rail line in six Midwestern and South Central States. It is a wholly owned subsidiary of Canadian National

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<sup>1</sup> Notice was served and published in the Federal Register on February 5, 2002 (67 FR 5361).

<sup>2</sup> The February 5th notice instituting the exemption proceeding provided that any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 was due no later than February 25, 2002. The Village's request for a public use condition and issuance of a NITU was filed on April 22, 2002. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), we retained the policy of accepting filings after the due date when good cause is shown. Because the Village's late-filed request has not delayed the proceeding and there is no indication that the request will prejudice any party, it will be accepted.

Railway Company,<sup>3</sup> which operates an approximately 18,000-mile rail system in 15 States in the United States and 8 Provinces in Canada.

The Heyworth Spur is a single-track, stub-ended line that was once part of IC's "Charter Line" route between Freeport and Centralia, IL. It extends from the south side of the Village of Heyworth through the village to the end of the line at milepost 786.5.<sup>4</sup> The Heyworth Spur forms the northern portion of IC's Clinton-Heyworth branch line, which connects at Clinton with IC's secondary main line between Gilman and Springfield, IL. The Heyworth Spur is in fair condition. The track is constructed with 90-, 110-, 112-, and 115-pound rail and is maintained as Federal Railroad Administration excepted track with a maximum speed limit of 10 m.p.h.

The line served one shipper, Carter Lumber (Carter), located at the end of the line. IC provided service to Carter on an as-needed basis by a road-switcher assignment based at IC's Clinton yard, 11 miles south of Heyworth. Traffic on the line consisted of inbound shipments of lumber. IC submits that traffic declined from 123 carloads in 1999, to 88 carloads in 2000, to 1 carload in the first 4 months of 2001. In April 2001, Carter ceased operating and closed its facility. Since then, no traffic has moved over the Heyworth Spur and IC claims that there is no prospect for the development of sufficient new rail traffic to sustain operations in the future. There is no overhead traffic.

After abandonment, IC intends to salvage rail and track materials from the portion of the line north of approximately milepost 784.23. The remaining segment of the line, from milepost 783.42 to approximately milepost 784.23, will be reclassified as side track and used to support service at the adjacent A.E. Staley (Staley) grain facility.<sup>5</sup> IC states that there are eight highway grade crossings on the Heyworth Spur, one of which is scheduled for a state-sponsored upgrade during the upcoming

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<sup>3</sup> Control of IC by CN was approved in Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company, STB Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999).

<sup>4</sup> In 1983, the route north of milepost 786.5 was abandoned. See Illinois Central Gulf Railroad Company—Abandonment—In McLean, Woodford, Marshall, LaSalle, Lee, Ogle and Stephenson Counties, IL, Docket No. AB-43 (Sub-No. 100) (ICC served June 17, 1983). IC states that approximately 1,500 feet of the abandoned track north of milepost 786.5 has remained in place and serves as a tail track.

<sup>5</sup> The southern limit of the proposed Heyworth Spur abandonment at milepost 783.42 is located at the south switch into the Staley facility. IC states that service to the Staley facility will not be affected by the proposed abandonment.

year. Abandonment of the Heyworth Spur will avoid this unnecessary expenditure of State funds on a grade crossing that is no longer active.

## 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 relieving IC from the expense of retaining and maintaining a line that generates no traffic and allowing IC to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because Carter, the sole shipper on the line, has ceased operations and there are no prospects for future rail traffic. Nevertheless, to ensure that Carter is informed of our action, we will require IC to serve a copy of this decision and notice on Carter 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 abandonment 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).

IC 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 the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on March 15, 2002. In the EA, SEA indicated that the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified six geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that the

following condition be imposed on any decision granting abandonment authority: that IC notify NGS 90 days prior to salvage activities in order to plan the relocation of these markers.

No comments on the EA were filed by the April 15, 2002 due date. We will impose the condition recommended by SEA. Accordingly, 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.

The Village requests issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). It has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has 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. By facsimile received on May 2, 2002, IC states that it is willing to negotiate with the Village for interim trail use. Because the Village's request complies with the requirements of 49 CFR 1152.29 and IC is willing to enter into trail use negotiations, we will issue a NITU for the subject line. 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, IC 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, if abandonment and salvage of the line does take place, the right-of-way may be suitable for other public use. The Village requests imposition of a 180-day public use condition to allow the Village to study recreational uses for the right-of-way. The Village requests that IC be precluded from: (1) disposing of the rail 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.

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 Abandonments—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. The Village has met the public use criteria prescribed at 49 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 will be imposed on the line to be abandoned, commencing from the effective date of this decision and notice. 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 person to acquire a right-of-way that has been found suitable for public purposes. Therefore, IC is not required to deal exclusively with the Village, but may engage in negotiations with other interested persons.

The parties should note that 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), 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, the trail use and public use processes may proceed.

It is ordered:

1. The Village's late-filed request for issuance of a NITU and for imposition of a public use condition is accepted.

2. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by IC 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 subject to the conditions that IC 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, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; (2) comply with the terms and conditions for implementing interim trail use/rail banking as set forth below; and (3) notify NGS 90 days prior to salvage activities in order to plan for the relocation of the 6 geodetic station markers that may be affected by the proposed abandonment.

3. IC is directed to serve a copy of this decision and notice on Carter within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.

4. If an interim trail use/rail banking agreement is reached, 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.

5. 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.

6. 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.

7. 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, IC may fully abandon the line, provided the conditions imposed above are met.

8. 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 May 16, 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 the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

9. 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.”**

10. Provided no OFA has been received, this exemption will be effective June 5, 2002. Petitions to stay must be filed by May 21, 2002, and petitions to reopen must be filed by May 31, 2002.

11. Pursuant to the provisions of 49 CFR 1152.29(e)(2), IC 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 IC’s filing of a notice of consummation by May 6, 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