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SERVICE DATE - MARCH 28, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-43 (Sub-No. 173X)

ILLINOIS CENTRAL RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN FORREST COUNTY, MS.

Decided: March 20, 2003

On December 10, 2002, the Illinois Central Railroad Company (IC) filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a rail line known as Central District Trackage, extending from milepost MH 0.66 to milepost MH 3.06, a distance of 2.4 miles, in Forrest County, MS. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (67 FR 76989) on December 30, 2002, instituting an exemption proceeding. A request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by Pearl & Leaf Rivers Rails-to-Trails Recreational District (District). We will grant the exemption, subject to trail use, public use, environmental, and standard employee protective conditions.

BACKGROUND

IC indicates that the Central District Trackage currently serves 2 shippers: Hercules Corporation (Hercules) and Mississippi Tank Company (Mississippi Tank).¹ According to IC, Hercules has two rail leads into its plant: one lead comes from the subject line that has not been used for many years; the other spur comes from IC's main line. IC states that it will continue to serve Hercules' plant from the second spur.

IC asserts that traffic volume for Mississippi Tank is extremely low and is not expected to grow. IC indicates that, in 2001, Mississippi Tank received 6 inbound shipment and originated 6 outbound shipments, and that, in 2002, the shipper received 3 inbound shipments and originated no shipments. Mississippi Tank has not protested the proposed abandonment.

¹ IC states that it served copies of its petition on Hercules and Mississippi Tank.

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 here. 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 costs of maintaining and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Neither shipper has opposed the exemption petition. Hercules will continue to be served from IC's main line. Mississippi Tank does not generate enough traffic to support future operations on the subject line. Nevertheless, to ensure that Hercules and Mississippi Tank are informed of our action, we will require IC to serve a copy of this decision and notice on these shippers within 5 days of the service date and certify to us that it has done so. In light of 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 set forth 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 February 7, 2003.

In the EA, SEA recommends that a condition be placed on any Board decision granting abandonment authority that would require IC to consult with the Mississippi Natural Heritage Program prior to conducting any salvage activities to determine measures to identify the species of special concern, the Appendaged Lobelia (Lobelia appendiculata), and to develop precautions to prevent disturbance to the species and its environment, if encountered during salvage.

The National Geodetic Survey (NGS) has submitted a comment identifying one geodetic station marker that may be affected by the proposed abandonment. NGS has requested 90 days' notice to plan relocation of any markers that may be disturbed or destroyed. SEA recommends that a condition be placed on any Board decision granting abandonment authority that would require IC to consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers.

No other comments on the EA were filed by the March 7, 2003 due date. We will impose the conditions 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.

On January 7, 2003, the District filed a request for issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The District 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 letter received on January 17, 2003, IC states that it is willing to negotiate for interim trail use. Because the District'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 District requests imposition of a 180-day public use condition to allow it to assemble or review title information, complete a trail plan and commence negotiations with IC. The District requests that IC be prohibited from: (1) disposing of the rail corridor, other than track, 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 District 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, to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use.

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. 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 set forth 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 (except for track, ties, and signal equipment) 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; (3) consult with the Mississippi Natural Heritage Program prior to conducting any salvage activities to determine measures to identify the species of special concern, the Appendaged Lobelia (Lobelia appendiculata), and to develop precautions to prevent disturbance to the species and its environment, if encountered during salvage; and (4) consult with NGS and provide NGS with 90 days notice prior to disturbing or destroying any geodetic station markers.

2. IC is directed to serve a copy of this decision and notice on Hercules and Mississippi Tank 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 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, IC 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 April 7, 2003, 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).

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 April 27, 2003. Petitions to stay must be filed by April 14, 2003; petitions to reopen must be filed by April 22, 2003.

10. 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 March 28, 2004, 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 Nober and Commissioner Morgan.

Vernon A. Williams
Secretary