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SERVICE DATE – AUGUST 26, 2014

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 303 (Sub-No. 44X)

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

Decided: August 26, 2014

Wisconsin Central Ltd. (WCL)<sup>1</sup> filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 6.4-mile rail line on its Pembine Subdivision, between milepost 242.21 (formerly milepost 243.00 on the old Shawano Subdivision) in Argonne and milepost 235.85 (formerly milepost 249.38) at Crandon, in Forest County, Wis. Notice of the exemption was served and published in the Federal Register on July 28, 2014 (79 Fed. Reg. 43,819). The exemption is scheduled to become effective on August 27, 2014.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on August 1, 2014, recommending that two environmental conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated the Wisconsin Department of Transportation (WisDOT) had indicated that, when WCL conducts abandonment and related salvage activities, WCL should: (1) comply with WisDOT's Abandoned Railroad, Line Salvage and Clean-up Policy/Standards/Procedures; (2) protect any surveying benchmarks and mapping information on the line; (3) remove any rail, ties, and ballast at the crossings of state highways; (4) obtain a permit from WisDOT Regional Maintenance Section to work on highway right-of-way; and (5) prior to removal of crossings at streets and roadways, contact the maintaining authority to coordinate work with them. Accordingly, OEA recommended that, prior to commencing any salvage activities, WCL shall be required to consult with WisDOT to address compliance with WisDOT's Abandoned Railroad, Line Salvage, and Clean-up Policy/Standards/Procedures.

In the EA, OEA also stated that the National Geodetic Survey (NGS) had advised that one geodetic survey marker had been identified that may be affected by the proposed abandonment. Therefore, OEA recommended that WCL be required to notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers to plan for the possible relocation of the geodetic station markers.

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<sup>1</sup> WCL is a wholly owned subsidiary of Canadian National Railway Company.

OEA issued its final EA on August 20, 2014, noting that no comments to the EA were received by the August 15, 2014 due date and recommending that the two previously recommended environmental conditions be imposed. Accordingly, the two conditions recommended by OEA in the EA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On August 6, 2014, on behalf of the Wisconsin Department of Natural Resources (WisDNR), WisDOT filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with WCL for acquisition of the 6.4-mile line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, WisDNR has submitted a statement of its willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By response filed on August 20, 2014, WCL states that it does not object to the request and has indicated its willingness to negotiate with WisDNR for interim trail use.

Because WisDNR's request complies with the requirements of 49 C.F.R. § 1152.29 and WCL is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, WCL may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on July 28, 2014, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit WisDNR to negotiate with WCL for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until February 22, 2015. The abandonment is also subject to the conditions that WCL shall: (1) prior to conducting any salvage activities, consult with the WisDOT to address compliance with WisDOT's Abandoned Railroad, Line Salvage, and Clean-up Policy/Standards/Procedures; and (2) notify NGS at least 90 days prior to beginning salvage

activities that would disturb or destroy any geodetic station markers to plan for the possible relocation of the geodetic station markers.

3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) 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 possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 3 above.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, 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 February 22, 2015, for the right-of-way, interim trail use may be implemented. If no agreement is reached, WCL may fully abandon the line.

8. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.