

40424
DO

SERVICE DATE – LATE RELEASE DECEMBER 22, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-303 (Sub-No. 34X)

WISCONSIN CENTRAL LTD.–ABANDONMENT EXEMPTION–IN BROWN COUNTY, WI

Decided: December 22, 2009

Wisconsin Central Ltd. (WCL) filed a verified notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 0.25-mile line of railroad between milepost 97.50 and milepost 97.75, in Denmark, Brown County, WI.¹ Notice of the exemption was served and published in the Federal Register on November 23, 2009 (74 FR 61202). The exemption is scheduled to become effective on December 23, 2009.

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 27, 2009, requesting comments by December 14, 2009. In the EA, SEA recommended that the Board not impose environmental conditions on any decision granting abandonment authority. No comments to the EA were filed by the December 14, 2009 due date. Therefore, no condition will be imposed. Because no environmental or historic preservation issues have been raised by any party or identified by SEA, a Finding of No Significant Impact under 49 CFR 1105.10(g) will be made pursuant to 49 CFR 1011.7(b)(9).

In the EA, SEA indicated that the right-of-way may be suitable for other public use following abandonment of the line. On November 25, 2009, the Wisconsin Department of Transportation (WisDOT), on behalf of Wisconsin Department of Natural Resources, filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. WisDOT has submitted a statement of willingness to assume full financial responsibility for the management of, for 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 (ROW), as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. By letter dated December 2, 2009, WCL states it is willing to negotiate with WisDOT for interim trail use.

¹ WCL is a wholly owned subsidiary of Canadian National Railway Company.

Because WisDOT's request complies with the requirements of 49 CFR 1152.29 and WCL is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, WCL may fully abandon the line, subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). By law, use of the ROW for trail purposes is subject to any future use of the property for restoration of railroad operations.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Abandonment of the involved rail line will have no significant effect on the quality of the human environment or the conservation of energy resources or on historic resources.
3. Upon reconsideration, the notice served and published in the Federal Register on November 23, 2009, exempting the abandonment of the 0.25-mile line of railroad described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit WisDOT to negotiate with WCL for trail use of the subject line for a period of 180 days commencing from the December 23, 2009 effective date of the exemption (until June 21, 2010).
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, for 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 ROW.
5. Use of the ROW for interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the ROW.
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 June 21, 2010, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line. See 49 CFR 1152.29(d)(1).
8. This decision is effective on its date of service.

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