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SERVICE DATE - SEPTEMBER 12, 2000

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-303 (Sub-No. 23X)

WISCONSIN CENTRAL LTD.--ABANDONMENT EXEMPTION--
IN FOREST AND LANGLADE COUNTIES, WI

Decided: September 7, 2000

By petition filed on May 25, 2000,¹ Wisconsin Central Ltd. (WCL) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903² to abandon a line of railroad known as the Crandon-White Lake Line, between milepost 254 south of Crandon and milepost 280 near White Lake, a distance of 26 miles, in Forest and Langlade Counties, WI. The Wisconsin Department of Transportation (WisDOT),³ on behalf of the Wisconsin Department of Natural Resources (WisDNR),⁴ requests issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d). We will grant the exemption, subject to trail use, environmental, and standard employee protective conditions.

BACKGROUND

WCL, a Class II rail carrier and wholly owned subsidiary of Wisconsin Central Transportation Corporation, operates approximately 2,000 miles of rail lines in four upper midwestern states.

¹ Notice of the filing was served and published in the Federal Register on June 14, 2000 (65 FR 37456).

² WCL's petition states that it seeks exemption from the provisions of 49 U.S.C. 10903-05, thus evidently including exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. WCL has not submitted evidence to establish that the proposed exemptions from sections 10904 and 10905 meet the criteria of 49 U.S.C. 10502. Therefore, its request as to those two provisions will not be considered. The request as to section 10905 appears to be moot in any event as no requests for public use conditions have been filed.

³ WisDOT is the designated state agency for rail matters in the State of Wisconsin. It has the statutory right to acquire for present or future transportation, recreational, or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin.

⁴ WisDNR is the lead state agency responsible for designating, acquiring, developing, and maintaining a system of state trails for public use.

WCL states that the only shipper on the line, Consolidated Papers (Consolidated), has been served with a copy of the exemption petition and has indicated that it does not object to the proposed abandonment. According to WCL, Consolidated shipped 27 cars on the line in 1998, none in 1999, and none in 2000 prior to the date it filed its petition for exemption. WCL asserts that all overhead traffic can be rerouted to other lines. It further states that, after abandonment, the track and materials that are salvageable will be used for upgrading and maintaining its other active rail lines and the remaining material will be sold as scrap.

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 WCL from the cost of maintaining a line that serves only one shipper, with no current rail traffic, and by allowing WCL to use 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 transaction is not necessary to protect shippers from the abuse of market power because the sole shipper located on the line to be abandoned does not object.⁵ Nevertheless, to ensure that the shipper is informed of our decision, we will require WCL to serve a copy of this decision on the shipper within 5 days of the service date and to certify to us that it has done so.

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).

WCL 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

⁵ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on July 24, 2000.

In the EA, SEA indicated that WisDNR has expressed concerns regarding salvage and conversion of the line into a recreational trail. Accordingly, SEA recommends that any decision granting abandonment authority contain a condition requiring WCL to comply with the Abandoned Railroad Line Salvage and Clean-up Policy/Standards/Procedures of WisDOT, as requested by WisDNR.

SEA also indicated that the National Geodetic Survey (NGS) has identified two geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring WCL to notify NGS at least 90 days prior to salvage activities in order to plan for relocation of the station markers.

No comments to the EA were filed by the August 23, 2000 due date. Accordingly, based on SEA's recommendations, 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.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. We note that no one has sought a public use condition, and none will be imposed.

As noted, WisDOT, on behalf of WisDNR, requests issuance of a NITU for the right-of-way involved in this proceeding. Acquisition of the rail corridor would allow WisDNR to use the right-of-way for trail purposes. WisDNR has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that the 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. WCL, responding to the request, states that it is willing to negotiate with WisDNR for interim trail use.

Because WisDOT's request complies with the requirements of 49 CFR 1152.29, and WCL is willing to enter into negotiations, we will issue a NITU for the described line. The parties may negotiate an agreement during the 180-day period described below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, WCL 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.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail

Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986), OFAs 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 precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use process 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 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 the conditions that WCL shall: (1) comply with the Abandoned Railroad Line Salvage and Clean-up Policy/Standards/Procedures of WisDOT as requested by WisDNR; (2) notify NGS at least 90 days prior to salvage activities in order to plan for relocation of the station markers; and (3) comply with the terms and conditions for implementing interim trail use/rail banking set forth below.
2. WCL must serve a copy of this decision on Consolidated within 5 days after the service date of this decision and 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, WCL may fully abandon the line, provided the conditions imposed in this proceeding 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 September 22, 2000, 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 \$1,000 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 on October 12, 2000. Petitions to stay must be filed by September 27, 2000, and petitions to reopen must be filed by October 10, 2000.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL 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 WCL's filing of a notice of consummation by September 12, 2001, 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 not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary