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SERVICE DATE - MARCH 13, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-303 (Sub-No. 18X)

WISCONSIN CENTRAL LTD.--ABANDONMENT EXEMPTION--
IN POLK COUNTY, WI

Decided: March 9, 1998

By petition filed November 24, 1997,¹ Wisconsin Central Ltd. (WCL) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Dresser-Amery Line, between milepost 47.83 in Dresser and milepost 63.08 in Amery, a distance of 15.25 miles, in Polk County, WI. The United Transportation Union (UTU) requests imposition of labor protective conditions. In addition, the Wisconsin Department of Transportation (WisDOT),² on behalf of the Wisconsin Department of Natural Resources (WisDNR),³ requests issuance of a notice of interim trail use (NITU). 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, owns and operates approximately 2,000 miles of rail lines in four upper midwestern states. WCL states that the only shipper on the line, Amery Equity Co-op (Equity), is pursuing plans to relocate its operations from Amery to Cylon, WI, which is on another WCL line, between Owen, WI, and Minneapolis, MN, that has a more frequent level of service. Accordingly, WCL submits that Equity will receive better service as a result of the relocation. WCL states that,

¹ Notice of the filing was served and published in the Federal Register on December 12, 1997 (62 FR 63602).

² WisDOT is the designated state agency for rail matters in the State of Wisconsin. It is responsible for all highway and airport construction within the state and 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.

³ WisDNR is the lead state agency responsible for designating, acquiring, developing, and maintaining a system of state trails for public use by equestrians, bicyclists, cross country skiers or hikers.

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 that is relocating its facilities and by allowing WCL to use its assets more productively elsewhere on its 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 Equity, the only shipper on the line, will apparently receive better service from WCL at its new location.⁴ Nevertheless, to ensure that the shipper is informed of our action, we will require WCL to serve a copy of this decision on Equity within 5 days of the service date of this decision and certify to us that it has done so.

UTU requests the imposition of labor protective conditions. 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 action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment, and SEA served an environmental assessment (EA) on January 23, 1998. In the EA, SEA indicated that WisDNR has advised the Board and WCL of a known petroleum soil contamination site at the

⁴ Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Amery Bulk Plant (Plant) in Amery located along the WCL right-of-way. Accordingly, SEA recommends, and we agree, that a condition be placed on any decision granting abandonment authority requiring WCL to consult with WisDNR in order to fulfill WCL's obligation in the clean up process at the Plant site, and any other contamination site involving the WCL right-of-way in this abandonment. This consultation will be required whether or not WCL plans to initiate any salvage activity and prior to any salvage activity.

SEA also indicated in the EA that the Wisconsin State Historic Preservation Officer (SHPO) had not completed a determination of historical significance for several WCL properties located on the right-of-way. Therefore, SEA recommended that a condition be imposed requiring WCL to retain its interest in and take no steps to alter the historic integrity of the right-of-way until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. However, subsequent to service of the EA, SEA received a letter from the SHPO indicating that there are no properties in the National Register of Historic Places located within the area of potential effect of the proposed abandonment. Accordingly, SEA now recommends, and we agree, that the historic preservation condition not be imposed.

No comments to the EA were filed by the February 20, 1998 due date. Based on SEA's recommendations, we conclude that the proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the lines's abandonment, the right-of-way may be suitable for other public uses under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

WisDOT, on behalf of WisDNR requests issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d), for the right-of-way involved in this proceeding. Acquisition of the rail corridor would allow WisDNR to use the right-of-way for bicycle, pedestrian or other 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. By letter filed December 30, 1997, WCL states that it is willing to negotiate with WisDNR for interim trail use. The request complies with the requirements of 49 CFR 1152.29 and WCL is willing to enter into negotiations. Therefore, we will issue a NITU for the described 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, 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), 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 U.S.C. 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, trail use may proceed.

It is ordered:

1. The request for a NITU under 49 U.S.C. 1247(d) is accepted.
2. 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 in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the condition that WCL consult with WisDNR (whether or not WCL plans to initiate any salvage activity and prior to any salvage activity) in order to fulfill WCL's obligation in the clean up process at the Plant site, and any other contamination site involving the WCL right-of-way in this abandonment.
3. WCL must serve a copy of this decision on Equity within 5 days after the service date of this decision and 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 specific 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, WCL may fully abandon the line, provided the conditions imposed in this proceeding are met.

8. An OFA under 49 CFR 1152.27(c)(1)⁵ to allow rail service to continue must be received by the railroad and the Board by March 23, 1998, 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.⁶ 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 on April 12, 1998. Petitions to stay must be filed by March 30, 1998, and petitions to reopen must be filed by April 7, 1998.

11. 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 March 13, 1999, 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 and Vice Chairman Owen.

Vernon A. Williams
Secretary

⁵ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

⁶ The fee will increase from \$900 to \$1,000 as of March 20, 1998.