

41358 SERVICE DATE – LATE RELEASE JANUARY 20, 2011

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 449 (Sub-No. 3X)]

Western Kentucky Railway, LLC—Abandonment Exemption—in Webster, Union, Caldwell and Crittenden Counties, Ky.

Western Kentucky Railway, LLC (WKRL) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon all 5 of its remaining lines of railroad in Webster, Union, Caldwell, and Crittenden Counties, Ky.¹ The lines are described as follows: (1) between milepost 48.0 at Dekoven and milepost 62.5 at Blackford; (2) between milepost 0.0 at Blackford and milepost 3.8 at Pyro Wye and between milepost 3.8 and milepost 8.5 at Clay; (3) between milepost 0.0 at Costain Prep Plant and milepost 9.5 at Providence; (4) the Wheatcroft loop track, which connects line 2 and line 3 described above, between milepost 0.8 +/- on line 3 and running north towards milepost 5.6 +/- and milepost 6.0 +/- on line 2; and (5) between milepost 0.0 at Costain Prep Plant and milepost 5.5 at Caney Creek. The line traverses United States Postal Service Zip Codes 42404, 42450, 42459, and 42604.

¹ WKRL originally filed its notice of exemption on December 29, 2010. However, on January 7, 2011, WKRL supplemented its notice to include a description of the Wheatcroft loop track, which was omitted in its original filing. Accordingly, January 7, 2011, is the official filing date.

WKRL has certified that: (1) no local traffic has moved over the lines for at least 2 years; (2) there is no overhead traffic on the subject lines because the subject lines are not “through lines”; (3) no formal complaint filed by a user of rail service on the lines (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 C.F.R. § 1105.7(c) (environmental report), 49 C.F.R. § 1105.11 (transmittal letter), 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. § 10502(g), unless the evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Honey Creek R.R.–Aban. Exemption.–in Henry County, Ind., AB 865X (STB served Aug. 20, 2004); Wellsville, Addison & Galetton R.R.–Aban., 354 I.C.C. 744 (1978); and Northampton and Bath R.R.–Aban., 354 I.C.C. 784 (1978). Because HCR does not appear to have a corporate affiliate or parent that will continue similar operations or that could benefit from the proposed abandonment, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 26, 2011, unless

stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2),³ and trail use/rail banking requests under 49 C.F.R. § 1152.29 must be filed by January 31, 2011. Petitions to reopen or requests for public use conditions under 49 C.F.R. § 1152.28 must be filed by February 9, 2011, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to WKRL's representative: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void ab initio.

WKRL has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by February 1, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA, at (202) 245-0305.

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Serv. Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

³ Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 C.F.R. § 1002.2(f)(25).

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), WKRL 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 WKRL's filing of a notice of consummation by January 20, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 13, 2011.

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