

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-303 (Sub-No. 28X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—IN ASHLAND
COUNTY, WI

Decided: April 28, 2006

Wisconsin Central Ltd. (WCL) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its line of railroad in Ashland, Ashland County, WI, referred to herein as the “Ore Dock Line” or “the Line.” The Line starts at a point of switch off WCL’s main line in Ashland at milepost 434.49 and continues 5,160 feet to the end of WCL’s Ashland Ore Dock, a large structure extending out over Lake Superior. Notice of the exemption was served and published in the Federal Register on February 23, 2006 (71 FR 9422-23). The exemption was scheduled to become effective on March 25, 2006.

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on February 28, 2006. Comments to the EA were due by March 15, 2006.

On March 10, 2006, SEA received comments from Wisconsin Department of Natural Resources (WisDNR) requesting the following:¹ (a) that the Board grant a stay relating to this proceeding; (b) that no final decision be rendered until completion of a study, currently underway, of the feasibility of future development of the Ashland Ore Dock (feasibility study) and development of a final plan for the long-term future of the Ore Dock based on the study; (c) that WCL obtain all necessary regulatory approvals; (d) that the Board’s conditions include appropriate financial assurances to ensure that the Ashland Ore Dock will either be maintained or removed from the bed of Lake Superior; and (e) that the Board impose environmental conditions that address WisDNR’s concerns about the long-term impact on the environment if the Ashland Ore Dock is not salvaged, conditioned upon the feasibility study.

On March 15, 2006, Wisconsin Department of Transportation (WisDOT) submitted a similar filing, requesting that this matter be stayed for 6 months to allow completion and review of the feasibility study and that conditions then be proposed to address the long-term environmental concerns.

¹ On March 13, 2006, the City of Ashland (City) filed a letter joining in WisDNR’s motion for a stay and supplemental comments.

In letters dated March 15, 2006, SEA also received comments from the U.S. Environmental Protection Agency, Region V, and the Leech Lake Band of Ojibwe. SEA noted that both entities have indicated that they have no comments on the abandonment as proposed.

WCL addressed the concerns that had been raised in a filing submitted on March 16, 2006. In this filing, WCL stated that it anticipated additional comments and would appreciate the opportunity to respond to them in a comprehensive manner. Therefore, WCL requested that the Board: (a) extend the comment period on the EA until March 31, 2006; (b) allow WCL until April 17, 2006, to respond to all comments; and (c) postpone the effective date of the abandonment exemption until May 1, 2006.

Due to the unique nature of the concerns surrounding this abandonment proceeding, SEA, on March 21, 2006, served a notice to the parties extending the comment period on the EA until March 31, 2006. By decision served on March 22, 2006, the Board, by the Director of the Office of Proceedings, granted the additional requests of the railroad.

Environmental Review

In the EA, SEA states that, in a letter dated April 5, 2004, WisDOT made a number of proposals regarding how WCL should conduct salvage activities on the Ore Dock Line. WisDOT requests that WCL comply with WisDOT's abandoned railroad line salvage procedures, protect surveying benchmarks, remove rail, ties, and ballast at the crossings of state highways, restore state highways at abandoned crossings, obtain a permit from the District Maintenance Section, and coordinate with WisDOT regarding its plans to widen U.S. Highway 2 in the vicinity of the proposed abandonment. In a letter dated October 3, 2005, WisDNR raised similar concerns regarding salvaging activities on the Line.

In response, WCL states that it intends to salvage only a very small portion of the Line while the remainder, including the Ashland Ore Dock, would be sold, pending regulatory approval, to the Northeastern Maritime Historical Foundation (Foundation). In order to appropriately address WisDOT's and WisDNR's concerns, SEA recommends that a condition be imposed requiring WCL to consult with WisDOT and WisDNR regarding how salvage activities should be conducted.

In a letter dated September 21, 2005, the City states that WCL should be responsible for stabilizing the Ashland Ore Dock and removing its associated trestle, or should fund the Foundation to undertake these tasks either prior to, or as a condition of, the proposed abandonment. The City also states that WCL has not taken appropriate steps to effectively restrict public access to the Ashland Ore Dock and its associated trestle. According to the City, WCL has installed a plastic fence around sections of the trestle, but has not taken any measures to prevent individuals from accessing the structures from the water (by boat in the summer and by foot in the winter when there is sufficient ice). The City further states that concrete is currently falling off of the

structure, which also has unsecured wood and loose metal components. SEA notes, however, that a number of the concerns raised by the City go toward issues related to the existing environment rather than environmental impacts associated with the proposed abandonment. To address safety concerns identified by the City that appear associated with the proposed abandonment, SEA recommends that the Board impose a condition requiring WCL, prior to conducting any salvage, to consult with the City to ensure public safety.

SEA also indicates that, in a letter dated April 1, 2005, Mr. William Gantz, Environmental Review Coordinator, WisDNR, states that a portion of the abandonment is located within the 100 year flood plain. In order to appropriately address impacts associated with potential salvage activities occurring within the 100 year flood plain, SEA recommends that a condition be imposed requiring WCL to consult with the City prior to conducting any salvage activities. As a result of other consultations with WisDNR, SEA also recommends a consultation condition regarding a state endangered species, the Common Tern.

Finally, SEA states that it has engaged in appropriate consultations regarding the eligibility of the Ashland Ore Dock for listing in the National Register of Historic Places (National Register). As a result of these consultations, SEA recommends that a condition be imposed requiring WCL to retain its interest in and take no steps to alter the historic integrity of the Ashland Ore Dock, which has been determined eligible for listing in the National Register, until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed.

As stated above, SEA received several comments in response to the EA. On April 14, 2006, WCL filed a response to these comments. WCL notes that it recently granted access to Westbrook Engineering, the engineering firm retained to complete the feasibility study on the Ashland Ore Dock. Additionally, WCL states that it has also provided additional information to the Wisconsin Board of Commissioners of Public Lands in hopes of addressing additional concerns identified by WisDNR. WCL also requests that the Board: (a) issue an order incorporating SEA's recommended environmental conditions; (b) allow WCL to remove the Ashland Ore Dock from the national rail network; (c) stay any disposition or conveyance of the Ashland Ore Dock for at least 6 months; and (d) require WCL to submit a status report prior to expiration of the 6-month period, during which time WCL and the appropriate agencies can attempt to work out agreements and the feasibility study can be completed.

In response, SEA states that it does not believe that a stay is necessary. According to SEA, WCL's desire for 6 months in which to work cooperatively with various agencies on issues relating to the Ashland Ore Dock can take place without a stay because its recommended section 106 condition on the Ashland Ore Dock would remain in effect. As indicated in the language of the condition (see below), this condition would preclude WCL from consummating abandonment of the Ashland Ore Dock, or conducting salvage activities related to the Ashland Ore Dock, until completion of the

section 106 process and subsequent removal of the condition by the Board. It is not anticipated that the section 106 process will be completed for at least 6 months.

In light of the comments received and WCL's response, SEA now recommends that, if the abandonment is approved, the Board impose the first four of the environmental conditions SEA recommended in the EA without change. SEA further recommends that the Board impose the section 106 condition as modified below:

5. WCL shall retain its interest in and take no steps to alter the historic integrity of the Ashland Ore Dock, which has been determined eligible for listing in the National Register of Historic Places, until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. WCL shall report back to SEA regarding any consultations with the Wisconsin Historical Society and any other section 106 consulting parties. WCL shall not consummate the abandonment of the Ashland Ore Dock or initiate any salvage activities related thereto until the Board removes this condition.

SEA further recommends imposition of the following new condition:

6. Prior to the expiration of 6 months from the service date of this decision, WCL shall submit a status report on resolution of outstanding issues related to the Ashland Ore Dock and completion of the feasibility study.

In light of the complete environmental record, SEA's analysis, conclusions, and final recommendations are appropriate and the final conditions recommended by SEA will be imposed.

As conditioned, this decision 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. Upon reconsideration, the exemption for the abandonment of the line described above, covered by the notice served and published in the Federal Register on February 23, 2006, is subject to the conditions that WCL shall: (1) consult with WisDOT and WisDNR regarding salvaging and abandonment procedures prior to commencement of any salvage activities; (2) consult with the City of Ashland regarding institution of appropriate safety measures prior to the commencement of any salvage activities; (3) if it appears that salvage activities may occur near nesting sites of the Common Tern (*Sterna-hirundo*), consult with WisDNR, Bureau of Endangered Resources, prior to commencement of any salvage activities, regarding salvage methods to minimize impacts to the Common Tern; (4) consult with the City of Ashland prior to the commencement of any salvage activities regarding potential impacts of abandonment on the City's 100 year

flood plain; (5) retain its interest in and take no steps to alter the historic integrity of the Ashland Ore Dock, which has been determined eligible for listing in the National Register of Historic Places, until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. WCL shall report back to SEA regarding any consultations with the Wisconsin Historical Society and any other section 106 consulting parties. WCL shall not consummate the abandonment of the Ashland Ore Dock or initiate any salvage activities related thereto until the Board removes this condition; and (6) prior to the expiration of 6 months from the service date of this decision, WCL shall submit to the Board a status report on the resolution of outstanding issues related to the Ashland Ore Dock and completion of the feasibility study.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary