

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: May 1, 2008

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.

By decision served April 28, 2006, the proceeding was reopened at the request of the Board’s Section of Environmental Analysis (SEA) and the exemption was made subject to six environmental conditions. One of the conditions (condition no. 5), required 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 of Historic Places, until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), has been completed. WCL was also directed to report back to SEA regarding any consultations with the Wisconsin Historical Society and any other section 106 consulting parties, and to refrain from consummating the abandonment of the Ashland Ore Dock or initiating any salvage activities related thereto until the Board removes this condition.¹

By decision served on February 12, 2008, the Board again reopened the proceeding and modified condition no. 5 based on new information presented by SEA in a Post Environmental Assessment. The modification, allowing WCL to salvage and/or secure those portions of the Dock that were in a severely deteriorated condition, read as follows:

WCL shall retain its interest in 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.

¹ Environmental condition no. 6 has been satisfied; the other four environmental conditions imposed in the April 28 decision remain in effect.

Based on the feasibility study prepared for the Wisconsin Department of Administration by Westbrook Associated Engineers, Inc., WCL shall take such steps as are necessary to protect the public health and safety by removing and/or stabilizing as necessary those portions of the Dock identified as being in a severely deteriorated condition. WCL shall not consummate the abandonment of the Dock or initiate any salvage activities related thereto until the Board removes this condition.

In a policy statement in Consummation of Rail Line Abandonments That Are Subject to Historic Preservation and Other Environmental Conditions, STB Ex Parte No. 678 (STB served Apr. 23, 2008), which became effective on April 23, 2008, the Board stated that, where an historic preservation condition under section 106 of the NHPA has been imposed on an abandonment, a consummation notice should not be filed for any part of the line until the historic review process has been completed and the section 106 condition has been removed. The agency added, however, that where a NHPA condition is needed only for a segment of the line or for a particular structure(s), the railroad may, in appropriate circumstances, request that the Board modify the condition to allow for salvage of those portions of the line unaffected by the condition.²

As pertinent here, on January 19, 2007, WCL filed a request for an extension of time to file its notice of consummation in this proceeding. On January 25, 2007, however, WCL filed a request for permission to withdraw the extension request as unnecessary, based on WCL's understanding that it could not consummate abandonment of any part of the line until the section 106 condition has been removed.

WCL's understanding of the relationship between an outstanding section 106 condition and a rail carrier's right to abandon a rail line is consistent with the Board's discussion in the April 23 policy statement. WCL's request to withdraw the extension request related to its historic preservation condition is therefore reasonable and the request to withdraw will be granted.

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

It is ordered:

1. WCL's request to withdraw its extension request is granted.

² The policy statement also discussed the effect of salvage conditions under the National Environmental Policy Act, 42 U.S.C. 4321 et seq. (NEPA), on consummation of abandonments and notices of consummation.

2. This decision is effective on its service date.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary