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SERVICE DATE – OCTOBER 16, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 303 (Sub-No. 56X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—
IN KAUKAUNA, OUTAGAMIE COUNTY, WIS.

Decided: October 16, 2020

On September 8, 2020, Wisconsin Central Ltd. (WCL) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 0.30-mile rail line between milepost 114.0 and milepost 113.7, at Kaukauna, Outagamie County, Wis. (the Line). Notice of the exemption was served and published in the Federal Register on September 25, 2020 (85 Fed. Reg. 60,514).

By decision served October 8, 2020, the Board issued a notice of interim trail use or abandonment (NITU) permitting the Wisconsin Department of Transportation (WisDOT), on behalf of the City of Kaukauna (the City), to negotiate with WCL for interim trail use/rail banking for the Line under the National Trails System Act, 16 U.S.C. § 1247(d), and also granted, in part, WCL's request for an expedited effective date, allowing the exemption to become effective on October 19, 2020.

The Board's Office of Environmental Analysis (OEA) served a Draft Environmental Assessment (Draft EA) on September 29, 2020. To ensure that the 100-year floodplain is not adversely affected, OEA recommended in the Draft EA that, in any decision granting abandonment authority, the Board impose a condition requiring WCL to consult with the U.S. Army Corps of Engineers (Corps), the Wisconsin Department of Natural Resources (WDNR), and the Federal Emergency Management Agency (FEMA) prior to commencement of any abandonment-related salvage activities regarding potential impacts to the floodplain and to comply with their reasonable requirements. Comments on the Draft EA were due by October 14, 2020.

OEA issued its Final Environmental Assessment (Final EA) on October 15, 2020, noting that it received one comment from the Oneida Nation of Wisconsin. The Tribal Historic Preservation Officer requested that the correct agencies be contacted in the event of an inadvertent discovery of cultural resources during this project. Accordingly, OEA is recommending that a condition relating to unanticipated discoveries be imposed on any decision granting abandonment authority. OEA also continues to recommend the consultation condition from the Draft EA. Based on OEA's recommendation, the conditions proposed in the Final EA will be imposed.

This decision, and the proposed abandonment if implemented as conditioned, 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 notice served and published in the Federal Register on September 25, 2020, exempting the abandonment of the Line described above is modified to the extent necessary to implement the following conditions:¹

(a) To ensure that the 100-year floodplain is not adversely affected, WCL shall consult with the Corps, WDNR, and FEMA prior to commencement of any abandonment-related salvage activities regarding potential impacts to the floodplain and shall comply with their reasonable requirements.

(b) In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during abandonment-related salvage activities, WCL shall immediately cease all work and notify OEA, interested federally recognized Tribes (including the Oneida Nation of Wisconsin), and the Wisconsin State Historic Preservation Office (SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, interested federally recognized Tribes, WCL, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

3. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

¹ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with the conditions set forth in the Final EA is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.