

SERVICE DATE – OCTOBER 8, 2020

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Digest:¹ This decision grants in part the request of Wisconsin Central Ltd. for an expedited effective date of its notice of exemption for abandonment authority and issues a notice of interim trail use or abandonment.

Decided: October 7, 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).

WCL explains that the Line was part of a longer rail line between milepost 114.0 and milepost 112.9 for which WCL obtained abandonment authority in March 2013. See Wis. Cent. Ltd.—Aban. Exemption—in Kaukauna, Outagamie Cnty., Wis., AB 303 (Sub No. 40X) (STB served Mar. 20, 2013). According to WCL, it sold the segment of the longer rail line between milepost 113.7 and milepost 112.9 to the City of Kaukauna (City) through the Wisconsin Department of Transportation (WisDOT) pursuant to a notice of interim trail use or abandonment under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). (WCL Verified Notice 1.) The abandonment authority for the Line, which was not included in the sale, subsequently lapsed. (Id.) WCL explains that, because the City now seeks to acquire the Line pursuant to the Trails Act to connect existing trail systems, it once again seeks an abandonment exemption to permit it to convey the Line to the City for interim trail use/rail banking under the Trails Act. (Id.)

Concurrently with its verified notice, WCL filed a separate request for an expedited effective date for the exemption. (WCL Req. 1.) WCL states that advancing the effective date will provide the City with additional time to undertake construction of a new pedestrian bridge on the right-of-way before winter typically arrives and will help assure that the grant funding deadlines for that project are satisfied. (Id. at 2.) WCL filed letters from the Village of Little

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Chute, Wis., and the City in support of its request for an expedited abandonment exemption and the City's acquisition of the Line for interim trail use under the Trails Act. (WCL Letter, Attach. 1, Sept. 11, 2020; WCL Letter, Attach. 1, Sept. 14, 2020.) On September 15, 2020, WCL filed a letter from U.S. Representative Mike Gallagher in support of WCL's request for an expedited abandonment exemption. (WCL Letter, Attach. 1, Sept. 15, 2020.) No party has filed in opposition to the request for an abandonment exemption or an expedited effective date.

On September 28, 2020, WisDOT, on behalf of the City, requested issuance of a notice of interim trail use or abandonment (NITU) to negotiate with WCL to establish interim trail use and railbanking on the Line under the Trails Act. In a response filed on September 30, 2020, WCL notified the Board that it intends to negotiate for a possible interim trail use/rail banking agreement with WisDOT and the City.

DISCUSSION AND CONCLUSIONS

Exemption Effective Date. Under 49 C.F.R. § 1152.50(d)(3), an exemption will become effective 30 days after publication of the notice in the Federal Register. Based on the publication date in this case, the exemption ordinarily would be effective on October 25, 2020. WCL, however, asks that the exemption be effective on October 13, 2020.

The two-year out-of-service class exemption established an expedited 50-day process for obtaining abandonment authority. 49 C.F.R. § 1152.50. The provisions of that exemption are intended to allow unused lines to be abandoned without undue regulatory delay and expense, while also ensuring the opportunity for public comment on environmental and other concerns. During the 30-day period between the time a notice of exemption is published and becomes effective, a Draft Environmental Assessment is issued for public review and comment, followed by issuance of a Final Environmental Assessment addressing the comments. Requests for other conditions, including trail use conditions under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, also are filed during this time.

Here, WCL requests that the Board shorten the deadlines for environmental comments and other pleadings to allow the exemption to become effective on October 13, 2020. While the Board in this instance will waive the 30-day time frame under § 1152.50(d)(3) to accommodate WCL's request for expedition, it will also preserve the public's opportunity to submit comments and pleadings in what is otherwise an already abbreviated exemption process. The exemption will take effect on October 19, 2020, unless it is stayed.²

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 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.

Interim Trail Use. As indicated above, WisDOT filed a request for the issuance of a NITU for the Line. WisDOT's request included a statement of willingness from the City to assume full responsibility for the management of the right-of-way, for any legal liability arising out of the transfer or use of the right-of-way, and for the payment of any and all taxes that may be levied or assessed against the right-of-way, as required by 49 C.F.R. § 1152.29. The City also provided a map and acknowledged that its use of the right-of-way for trail purposes is subject to its continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. WCL has agreed to negotiate for interim trail use/rail banking with WisDOT on behalf of the City.

Because WisDOT's request complies with the requirements of 49 C.F.R. § 1152.29 and WCL agrees to negotiate for trail use, the Board will issue a NITU for the Line. The parties may negotiate an interim trail use/rail banking agreement during the one-year period prescribed below. If an interim trail use/rail banking agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) & (h). If no agreement is reached within one year, WCL may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1)(i). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way.

Environmental and Historic Review. Environmental and historic preservation conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. WCL's petition for waiver is granted in part. The exemption, unless stayed, will become effective on October 19, 2020.
2. 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 interim trail use/rail banking as set forth below to permit WisDOT on behalf of the City to negotiate with WCL for trail use for the Line for a period of one year from the service date of this decision and notice, until October 8, 2021.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 3 above.

5. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. §§ 1152.29(d)(2) & (h).

6. If interim trail use/rail banking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/rail banking agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by October 8, 2021, for the right-of-way, interim trail use/rail banking may be implemented. If no agreement is reached, WCL may fully abandon the Line, subject to any outstanding conditions.

8. This decision and notice is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.