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Office of Proceedings
July 1, 2020
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July 1, 2020

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: **Docket No. AB 1107X, West Michigan Railroad Co. – Abandonment
Exemption – in Van Buren County, Mich.**

REQUEST TO MODIFY EXEMPTION

Dear Ms. Brown:

For the reasons set forth below, West Michigan Railroad Co. (“WMI”) hereby requests that – (1) the notice served and published in the *Federal Register* in the above-captioned proceeding on January 28, 2013 (78 Fed. Reg. 5867) be modified to – (1) authorize the discontinuance, and not the abandonment, of the line segments between (a) mileposts 19.88 and 25.1, and (b) mileposts 26.5 and 30.2; and (2) permit the modified exemption to take effect as of the service date of the requested modification order.

WMI secured authority to abandon approximately 10.67 miles of rail line between milepost 19.88 (west of the line’s crossing of 56th Street near Lawrence) and milepost 30.55 (east of Kalamazoo Street in Paw Paw), in Van Buren County, Michigan (the “Line”) effective as of February 27, 2013. By letters filed on January 31, 2014, and February 4, 2014, WMI notified the Board that it had consummated the abandonment of the following two portions of the Line: (1) between mileposts 30.2 and 30.55 (the “Western Segment”); and (2) between mileposts 25.1 and 26.5 (the “Cora Segment”), respectively. In connection with the Cora Segment, WMI had advised the Board that it had secured contractual rights to re-acquire a right-of-way from affected landowners along to Cora segment to permit possible future reactivation of service beyond milepost 26.5.¹ WMI Letter 1, Feb. 21, 2014.

¹ WMI’s contracted-for right to re-establish a right-of-way along the former Cora Segment route notwithstanding, WMI, as an existing rail common carrier, also possesses the right

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Beginning with the Board's issuance of a notice of interim trails use on June 7, 2013, WMI engaged in interim trails use discussions with the Friends of the Kal-Haven Trail and Van Buren County Board of Park Trustees, and later (following abandonment of the Western Segment and the Cora Segment, which segments were thereby excluded from interim trails use efforts) with the Michigan Department of Natural Resources ("MDNR"). Those negotiation periods were extended several times by Board order, with the most recent such interim trails use negotiating period extending to May 5, 2020, per a decision served on November 27, 2019.

MDNR has not requested an extension of negotiations. Because the trails use negotiation period has expired (with no extensions requested or pending), and the record reflects that there are no legal or regulatory barriers to the abandonment of the line segments that have been the subject of interim trails use negotiations, 49 C.F.R. § 1152.29(e)(2) provides that WMI has 60 days from May 5, 2020, to notify the Board of its decision concerning whether or not to consummate abandonment of the segments of the Line not previously abandoned. This letter filing is prompted by that approaching deadline.

Having evaluated its options, WMI will relinquish abandonment authorization for the segments of the Line that remain subject the Board's jurisdiction, but it will retain the discontinuance of service authorization implicitly included in such abandonment authority for the portions of the Line between mileposts 19.88 and 25.1, and mileposts 26.5 and 30.2. *See Illinois Central Railroad Company – Discontinuance Exemption – In Champaign County, Ill.*, AB-43 (Sub-No. 189X) (STB served Aug. 16, 2017), 2 ("When a rail carrier is authorized to abandon a line, that authority is permissive, not mandatory: the rail carrier can choose to exercise that authority or not. Moreover, abandonment authority implicitly includes discontinuance authority. *Ala. Great S. R.R.—Discontinuance Exemption—in Saint Bernard Parish, La.*, AB 290 (323X), slip op. at 1 (STB served Dec. 17, 2013)"). By modification of the exemption, WMI will ensure continued Board jurisdiction over the Line segments between mileposts 19.88 and 25.1, and mileposts 26.5 and 30.2,² while relieving WMI of any common carrier obligation pending a future restoration of service beyond milepost 19.88.

under state law to secure a right-of-way at the location of the former Cora Segment route should such a step ever prove necessary.

² *See Sierra Northern Railway – Abandonment Exemption – In Yolo County, Cal.*, AB-874 (Sub-No. 1X) (STB served Jun. 23, 2020); and *West Michigan Railroad Co. – Abandonment Exemption – In Van Buren County, Mich.*, AB-1107X (STB served Nov. 27, 2019) – which, together, support the Board's determination to retain jurisdiction over the segment of the Line between mileposts 26.5 and 30.2.

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For the reasons set forth above, and in keeping with applicable precedent, WMI respectfully requests that the notice served and published in the *Federal Register* in this proceeding on January 28, 2013 be modified to – (1) authorize the discontinuance, and not the abandonment, of the line segments between (a) mileposts 19.88 and 25.1, and (b) mileposts 26.5 and 30.2; and (2) permit the modified exemption to take effect as of the service date of the aforementioned modification order.

Respectfully submitted,

/s/ R. A. Wimbish

Robert A. Wimbish
Attorney for West Michigan Railroad Co.

RAW:ah
cc: All Parties of Record