

SERVICE DATE - JUNE 25, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 303 (Sub-No. 46X)

WISCONSIN CENTRAL LTD.— ABANDONMENT EXEMPTION—
IN LAKE COUNTY, ILL.

Digest:¹ This decision allows Wisconsin Central Ltd. to end its common carrier obligation to provide freight rail service over approximately 3.6 miles of rail line in Lake County, Ill., subject to environmental and standard employee protective conditions.

Decided: June 24, 2015

By petition filed on March 11, 2015, Wisconsin Central Ltd. (WCL) seeks an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to abandon 3.6 miles of rail line extending between milepost 71.0 in North Chicago, Lake County, Ill., and milepost 74.6 in Waukegan, Lake County, Ill. (the Line). Notice of the exemption was served and published in the Federal Register on March 31, 2015 (80 Fed. Reg. 17,141). WCL also seeks an exemption from the offer of financial assistance (OFA) provisions of 49 U.S.C. § 10904.

No comments in opposition to the proposed abandonment were filed. We are granting the exemption from 49 U.S.C. § 10903, subject to environmental and standard employee protective conditions. We are also granting WCL's request for exemption from the OFA process.

BACKGROUND

WCL states that the Line was originally part of the Waukegan and Southwestern Railway Company, which was conveyed to Elgin, Joliet and Eastern Railway Company (EJ&E) in 1891. In 2012, WCL and EJ&E, both indirect subsidiaries of Canadian National Railway Company, were consolidated into WCL.² The Line is the northernmost end of a stub-ended line located in an urban and industrial area that runs parallel to Lake Michigan. After receiving Board authority

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).

² See Wis. Cent. Ltd.—Intra-Corporate Family Merger Exemption—Elgin, Joliet & E. Ry., FD 35630 (STB served June 8, 2012).

to abandon the Line, WCL intends to salvage the rails, ties, and other track material and negotiate a sale of the right-of-way in Waukegan to the City of Waukegan (City). According to WCL, the sale of the right-of-way would allow the City to implement an urban redevelopment project.

WCL states that the Line serves one shipper, International Precision Components Corporation (IPCC).³ WCL states that IPCC has a terminable agreement with WCL to lease a side track connecting to the Line. From WCL's side track, IPCC transloads shipments to truck for final delivery at IPCC's off-Line manufacturing facility. WCL states that it is exploring the relocation of IPCC's transloading operations to another rail-served location. WCL adds that there is no overhead traffic because the Line is stub-ended.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not abandon a rail line without the prior approval of the Board. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed abandonment is not necessary to carry out the RTP in this case. By minimizing the administrative expense of the application process, an exemption would expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. §§ 10101(2) and (7). An exemption would also foster sound economic conditions and encourage efficient management by more quickly permitting WCL to abandon a line that would become surplus trackage once IPCC's transloading operation is relocated. 49 U.S.C. §§ 10101(5) and (9). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

We also find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power.⁴ IPCC, the Line's sole shipper, has been provided notice of the petition and has not opposed the proposed abandonment. The record indicates that WCL is attempting to relocate IPCC's transload operations. Further, there is no overhead traffic that could be adversely affected. Nevertheless, to ensure that IPCC is informed of our action here, we will direct WCL to serve a copy of this decision on IPCC within five days of the service date of this decision, and to certify to the Board contemporaneously that it has done so.

³ WCL served a copy of its petition for exemption on IPCC.

⁴ Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Exemption from Section 10904. Under 49 U.S.C. § 10904, a financially responsible person may offer to purchase, or subsidize continued rail operations over a rail line sought to be abandoned. The Board has granted exemptions from the OFA provisions of 49 U.S.C. § 10904 when the record shows that the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service. See, e.g., BNSF Ry.—Aban. Exemption—in Los Angeles Cnty., Cal., AB 6 (Sub-No. 477X) (STB served Sept. 16, 2011). In support of its request, WCL asserts that an exemption is needed so that the City can implement its multi-faceted lakefront revitalization and redevelopment plans.⁵ The City states that a major step in this plan is WCL's agreement to convey the right-of-way to the City. WCL asserts that application of the OFA provisions could undermine, if not defeat, elements of the City's plans. No party has filed in opposition to WCL's request for exemption from § 10904.

WCL has justified an exemption from the OFA process. WCL has demonstrated that its abandonment of the Line and plans to convey the right-of-way to the City are for a valid public purpose. Likewise, there is no overriding public need for continued rail service. As noted, IPCC is the only shipper located on the Line and has not expressed to the Board opposition to the proposed abandonment. WCL states that it is exploring the relocation of IPCC's transloading operations to another rail-served location and does not anticipate any future rail traffic, particularly since such rail-related industrial development would be contrary to Waukegan's redevelopment plans. Accordingly, we find that a valid public purpose is present, and there is no overriding public need for continued freight rail service on the Line.

We conclude that applying the OFA provisions in this situation is not necessary to carry out the RTP. Sections 10101(2) and (7) would be furthered by allowing the abandonment exemption to expeditiously become effective without the potential delay of the OFA process. Moreover, applying the OFA statute here is not necessary to protect the shipper on the Line. Thus, the record here establishes that the proposed exemption from 49 U.S.C. § 10904 meets the exemption criteria of 49 U.S.C. § 10502.

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose upon WCL the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental Review. WCL also submitted a combined environmental and historic report and notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 C.F.R. § 1105.711. The Board's Office of Environmental Analysis (OEA) has examined

⁵ WCL attached a letter of support from the City. Petition, Ex. C.

the environmental and historic report, investigated the record, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA issued an Environmental Assessment (EA) for public review and comment on May 8, 2015, recommending that three conditions be imposed on any decision granting abandonment authority.

In the EA, OEA states that the Chicago District of the U.S. Army Corps of Engineers (Corps) has determined that the proposed action may require Corps permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act because the Line borders Lake Michigan and numerous wetlands located in close proximity. The Line also crosses the Waukegan River and is within the jurisdictional limits of Lake Michigan, both bodies of water regulated under Section 10 of the Rivers and Harbors Act. Accordingly, OEA recommends a condition requiring WCL to consult with the Corps regarding potential impacts to waters of the United States and to comply with the Corps' reasonable requirements before beginning any salvage activities.

OEA further states that it has not received comments from the U.S. Fish and Wildlife Service (USFWS) on the possible applicability of Section 7 of the Endangered Species Act. However, OEA conducted a search of the USFWS Endangered Species Database and identified several federally listed endangered or threatened species that may be affected by the proposed abandonment. OEA is uncertain if these species are likely to be present in the rail right-of-way. Therefore, OEA recommends a condition requiring WCL to consult with the USFWS, prior to beginning salvage activities, to discuss potential impacts to any federally listed endangered or threatened species. The condition would require WCL to report the results of the consultation to OEA in writing, and, should any potential impacts be identified, to consult with OEA and USFWS to develop appropriate mitigation measures.

In the EA, OEA also states that it has not received comments from the Illinois Coastal Management Office regarding whether the proposed abandonment would affect coastal waters in Illinois, but notes that the Line is within the the Illinois state coastal boundaries of Lake Michigan. Thus, OEA recommends the imposition of a condition requiring WCL to consult with the Illinois State Coastal Management Office prior to beginning any salvage activities to determine whether state coastal management consistency certification is required. The condition would require WCL to report the results of the consultation to OEA in writing and have the Board remove this condition before WCL could file its consummation notice or initiate any salvage activities.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally recognized tribes that may have ancestral connections to the project area. According to OEA, the Database indicated that there are 12 tribes that may have knowledge regarding properties of traditional religious and cultural

significance within the right-of-way of the proposed abandonment. OEA sent a copy of the EA to these tribes for review and comment.⁶

Comments to the EA were due by June 8, 2015. OEA issued a Final EA on June 8, 2015, noting that no comments were received and recommending that the previously recommended environmental conditions be imposed. Accordingly, the conditions recommended by OEA will be imposed. Based on OEA's recommendation, the Board concludes that 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. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by WCL of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line, and subject to the conditions that prior to beginning any salvage activities, WCL shall:

- (a) consult with the Corps regarding potential impacts to the waters of the United States and comply with the Corps' reasonable requirements;
- (b) consult with the USFWS to discuss potential impacts to any federally listed endangered or threatened species and report the results of this consultation to OEA in writing. Should any potential impacts be identified, WCL shall consult with OEA and USFWS to develop appropriate mitigation measures; and
- (c) consult with the Illinois State Coastal Management Office, pursuant to the Coastal Zone Management Act, 16 U.S.C. § 1451 et seq., and the Board's environmental regulations, 49 C.F.R. § 1105.9, to determine whether state coastal management consistency certification is required. WCL may not file its consummation notice or initiate any salvage activities related to abandonment until it reports the results of these consultations in writing to OEA and the Board has removed this condition.

⁶ The Database is at: <http://grants.cr.nps.gov/nacd/index.cfm>. The identified tribes are as follows: the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wis.; Bois Forte Band of Chippewa, Minn.; Citizen Potawatomi Nation, Okla.; Minnesota Chippewa Tribe, Minn.; Forest County Potawatomi Community, Wis.; Grand Portage Band of Lake Superior Chippewa, Minn.; Hannahville Indian Community, Mich.; Keweenaw Bay Indian Community, Mich.; Lac Courte Oreilles Band of Lake Superior Chippewa, Wis.; Lac du Flambeau Band of Lake Superior Chippewa Indians, Wis.; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Mich.; and the Prairie Band of Potawatomi Nation, Kan.

2. WCL's request for exemption from the provisions of 49 U.S.C. § 10904 is granted.
3. WCL is directed to serve a copy of this decision on IPCC within five days after the service date of this decision and to certify contemporaneously to the Board that it has done so.
4. Petitions to stay must be filed by July 6, 2015. Petitions to reopen must be filed by July 15, 2015.
5. Pursuant to 49 C.F.R. § 1152.29(e)(2), WCL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by WCL's filing of a notice of consummation by June 25, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed no later than 60 days after the satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.