

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-43 (Sub-No. 184X)

ILLINOIS CENTRAL RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN COOK COUNTY, IL

Decided: December 16, 2008

By petition filed on August 29, 2008 (August 2008 filing), and amended by letter filed on October 13, 2008 (October 2008 filing), Illinois Central Railroad Company (IC) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 3,205 feet of rail line beginning at the point of clearance at Station 26+58 (Halsted Street) and extending northeasterly approximately 3,205 feet to the end of the track at Station 58+63 (Cermak Road), all in Chicago, Cook County, IL.¹ On October 15, 2008, Commissioner Thomas G. Byrne of the Chicago Department of Transportation (CDOT), on behalf of the City of Chicago, an Illinois municipal corporation, acting by and through CDOT (collectively referred to as CDOT), filed a request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition.² The Board will grant the exemption as amended, subject to trail use, public use, and standard employee protective conditions.

¹ IC, in its August 2008 filing, had sought to abandon approximately 1.1 miles of rail line, beginning from the point of switch at Station 0+00 (mainline MP 3.00-Throop Street) and extending northeasterly 5,863 feet to the end of the track at Station 58+63 (mainline MP 2.00-Cermak Road), where it stub-ends, all in Chicago. Notice of the August 2008 filing was served and published in the Federal Register on September 18, 2008 (73 FR 54202) (September 2008 notice). In its October 2008 filing, IC states that, in the description of the line, IC inadvertently included trackage that is part of IC's adjacent multi-track mainline and is used as a switching lead for a nearby IC yard. IC indicates that that portion of IC's mainline is not subject to abandonment and was not intended to be included in its petition. IC submits that, because the line encompasses less trackage than originally described in its petition, IC's environmental and historic consultations and reporting requirements are not adversely affected and remain valid. IC certified that it served its October 2008 filing on all parties that were served with the original petition for exemption.

² The September 2008 notice provided that any request for a public use condition under 49 CFR 1152.28 or trail use/rail banking under 49 CFR 1152.29 were to be filed by October 8, 2008. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that CDOT's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway

(continued . . .)

BACKGROUND

IC, a Class I rail carrier, owns and operates approximately 2,550 miles of rail line in six Midwestern and South Central states. IC is a wholly owned subsidiary of Canadian National Railway Company.

According to IC, even though the line is classified as an industrial spur and does not contain mileposts, the line was once part of the main line of IC's predecessor, the Chicago and Alton Railroad, in Chicago. IC states that it has not located any record of an abandonment for the line or any evidence of the line having been relocated, and, therefore, is seeking an exemption to allow IC to abandon the line.

IC states that the only shipper on the line, Allied Metals, located at the end of the line, received 201 cars of inbound scrap metal from January 3, 2006, through September 26, 2006. Since September 2006, however, Allied Metals has ordered only one inbound car—a car of scrap metal in March 2008. IC indicates that it was unable to spot that car at Allied Metals due to track conditions and, instead, spotted the car at an alternate location and arranged to transload the material at IC's expense. IC submits that there have been no outbound cars from Allied Metals in 2006, 2007, or 2008, and that there is no overhead traffic on the line. IC states that it has embargoed the line due to the track conditions that were discovered in March 2008. According to IC, the line is in poor condition and significant rehabilitation is needed for the line to remain in service. IC states that rehabilitation is not economically justified given the lack of traffic on the line and the line's inability to cover its own operating expenses. IC states that abandonment is necessary because there is no reasonable prospect for the resumption or development of new rail traffic in the near future that would support operations on the line. Following abandonment, IC indicates that it intends to use track and materials from the line that are salvageable for upgrading and maintaining its other active rail lines, and that the remaining materials will be sold as scrap.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior approval from the Board. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy 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.

(. . . continued)

Company—Abandonment Exemption—in Stark County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also promote a safe and efficient rail transportation system, foster sound economic conditions, and encourage efficient rail management by relieving IC from the expense of retaining and maintaining a line that generates no traffic and permitting IC to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Only one car has been requested since September 2006 and, since the embargo of the line in March 2008, no traffic has moved over the line. The only shipper to use the line, Allied Metals, has not objected to the abandonment exemption. Nevertheless, to ensure that Allied Metals is informed of the Board's action, IC will be required to serve a copy of this decision on Allied Metals within 5 days of the service date of this decision and notice and to certify to the Board that it has done so. Given the market power finding here, the Board need not determine whether the proposed transaction is limited in scope.

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, the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

IC has submitted a combined environmental and historic report with its petition and has 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 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental and historic report, verified IC's data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) in this proceeding on October 27, 2008, recommending that no conditions be placed on any decision granting abandonment authority. Comments to the EA were due by November 27, 2008, but none were received. Accordingly, no environmental or historic preservation conditions will be imposed. Based on SEA's recommendation, the Board concludes that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

As previously noted, CDOT has filed a request for issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR 1152.29, to enable it to negotiate with IC for rail banking and interim trail use of the right-of-way. CDOT has submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. In a letter filed on October 21, 2008, IC states that it is willing to negotiate with CDOT for interim trail

use. Because CDOT's request complies with the requirements of 49 CFR 1152.29 and IC is willing to enter into negotiations, a NITU will be issued. The parties may negotiate an agreement for interim trail use/rail banking during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, IC may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that the right-of-way may be appropriate for other public use, after abandonment. As noted, CDOT also has filed a request for a public use condition under 49 U.S.C. 10905, precluding IC, for 180 days, from: (1) disposing of the corridor, other than track, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels. CDOT states that the line runs along the Chicago River and is part of the proposed alignment for the South Branch Riverwalk. CDOT states that it is the City of Chicago's bikeway facilities development plan to establish a trail along this rail corridor and that conversion of the property to trail use is consistent with the Greenways and Trails Plan of the Chicago Metropolitan Agency for Planning.

The Board has determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. CDOT has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition also will be imposed, commencing from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. If a trail use agreement is reached on a portion of the right-of-way, IC must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, it should be noted that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to negotiate to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, IC is not required to deal exclusively with CDOT, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at

later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

It is ordered:

1. The late-filed request for a NITU under 49 U.S.C. 1247(d) and a public use condition under 49 U.S.C. 10905 is accepted.

2. Under 49 U.S.C. 10502, the Board exempts, from the prior approval requirements of 49 U.S.C. 10903, the abandonment by IC of approximately 3,205 feet of rail line, beginning at the point of clearance at Station 26+58 (Halsted Street), and extending northeasterly approximately 3,205 feet to the end of the track at Station 58+63 (Cermak Road), all in Chicago, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1978), and subject to the conditions that IC shall: (1) leave intact the right-of-way, including bridges, trestles, culverts, and tunnels (except track, ties, and signal equipment) for a period of 180 days from the effective date of this decision and notice, to enable any state or local government agency or any other interested person, to negotiate the acquisition of the line for public use; and (2) comply with the interim trail use/rail banking procedures set forth below.

3. IC is directed to serve a copy of this decision on Allied Metals within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, 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 June 15, 2009, interim trail use may be implemented. If no agreement is reached by that time, IC may fully abandon the line. See 49 CFR 1152.29(d)(1). If an interim trail use/rail banking agreement is executed before June 15, 2009, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

8. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by December 24, 2008, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,500. See 49 CFR 1002.2(f)(25).

9. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

10. Provided no OFA has been received, this exemption will be effective on January 16, 2009. Petitions to stay must be filed by January 2, 2009, and petitions to reopen must be filed by January 12, 2009.

11. Pursuant to the provisions of 49 CFR 1152.29(e)(2), IC 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 IC's filing of a notice of consummation by December 17, 2009, 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 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary