

SERVICE DATE – AUGUST 16, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 43 (Sub-No. 189X)

ILLINOIS CENTRAL RAILROAD COMPANY—DISCONTINUANCE EXEMPTION—IN
CHAMPAIGN COUNTY, ILL.¹

Decided: August 16, 2017

Illinois Central Railroad Company (IC), a wholly owned subsidiary of Canadian National Railway Company, filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F-Exempt Abandonments to abandon approximately 3.2 miles of railroad line (the Line) between milepost 7.8 in Bondville and milepost 11 in Seymour, in Champaign County, Ill. Notice of the exemption was served and published in the Federal Register on April 10, 2015 (80 Fed. Reg. 19,400). The Board's notice indicated that the exemption would become effective on May 12, 2015, unless stayed or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 was received. Such expressions of intent were due by April 20, 2015.

On April 30, 2015, 10 days after the April 20 deadline, Topflight Grain Cooperative (Topflight) submitted a notice of intent to file an OFA (NOI). In reply, IC argued that Topflight's late-filed NOI should not be accepted. The Board, by decision of the Director of the Office of Proceedings, rejected the NOI because Topflight provided no reason why its NOI was late and because IC objected to the late filing. Ill. Cent. R.R.—Aban. Exemption—in Champaign Cty., Ill., AB 43 (Sub-No. 189X) (STB served May 11, 2015).

Topflight appealed that decision to the Board, and IC replied in opposition. The Board granted Topflight's appeal, accepted Topflight's NOI, directed IC to provide Topflight certain OFA-related information, and set a deadline for Topflight's OFA. Ill. Cent. R.R.—Aban. Exemption—in Champaign Cty., Ill., AB 43 (Sub-No. 189X), slip op. at 3 (STB served July 2, 2015). Shortly thereafter, however (before the deadlines for providing the OFA information and filing the OFA), the proceeding was held in abeyance at the parties' request to permit them to negotiate a private resolution of the issues. Ill. Cent. R.R.—Aban. Exemption—in Champaign Cty., Ill., AB 43 (Sub-No. 189X) (STB served July 10, 2015). Thereafter, the parties filed periodic reports on the status of their negotiations.

On June 30, 2017, the parties jointly notified the Board that they had reached an agreement under which IC would seek permission to modify its notice of exemption to authorize only discontinuance of the Line rather than abandonment. Accordingly, in that filing, IC requested such permission. Topflight indicated that it supports IC's request and acknowledged

¹ The case title has been changed to reflect the action being taken here.

that, if IC's request is granted, Topflight would no longer be able to pursue acquiring the Line through an OFA in this docket.

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).

Here, IC has not exercised its abandonment authority (and indeed it could not, as the abandonment exemption never became effective), so the Line has not been abandoned and the Board's primary jurisdiction over it continues. In light of the parties' agreement, the abeyance will be lifted and IC's request to modify its grant of authority from abandonment authority to discontinuance authority will be granted.

Because there will be environmental review in connection with any future request by IC for authority to abandon the Line, this discontinuance does not require an environmental review, and the environmental review conducted in connection with IC's abandonment exemption, see Ill. Cent. R.R.—Aban. Exemption—in Champaign Cty., Ill., AB 43 (Sub-No. 189X) (STB served Apr. 17, 2015), is moot. Because the exemption granted here is for discontinuance only and not abandonment, interim trail use/railbanking and public use conditions are not appropriate. The Oregon Short Line² employee protective provisions imposed in the notice served and published in the Federal Register on April 10, 2015, still apply.

It is ordered:

1. The abeyance order served July 10, 2015, is lifted.
2. The notice served and published in the Federal Register on April 10, 2015, is modified to authorize only discontinuance authority and not abandonment authority. This exemption will be effective on August 16, 2017.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

² Or. Short Line R.R.—Aban. Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Ctys., Idaho, 360 I.C.C. 91 (1979).