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SERVICE DATE – APRIL 28, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-511 (Sub-No. 4X)

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS—ABANDONMENT EXEMPTION—  
IN HOWARD COUNTY, IN

Decided: April 27, 2009

Central Railroad Company of Indianapolis (CERA)<sup>1</sup> filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 5.18-miles of rail line, consisting of 2.38 miles between milepost 181.26 and milepost 183.64, on CERA’s main line (West Kokomo line segment), and 2.8 miles between milepost 51.5 and milepost 54.3, on CERA’s Tipton Industrial Lead (South Kokomo line segment), in Howard County, IN. Notice of the exemption was served and published in the Federal Register on March 30, 2009 (74 FR 14186). The notice stated that the exemption was scheduled to become effective on April 29, 2009, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by April 9, 2009.

On April 3, 2009, US Rail Holdings, LLC and Winamac Southern Railway Company (Offerors) jointly filed a formal expression of intent to file an OFA to purchase CERA’s line segments proposed for abandonment. This filing automatically stayed the effective date of the exemption for 10 days, until May 9, 2009.<sup>2</sup> In the filing, Offerors indicated that by letter dated March 18, 2009, they had requested that CERA, pursuant to 49 CFR 1152.27(a), provide them with the information needed to formulate their OFA.

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 3, 2009. In the EA, SEA indicates that the National Geodetic Survey (NGS) has stated that approximately one geodetic station marker may be located in the area of the proposed abandonment. Accordingly, SEA recommends that CERA be required to consult with and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers.

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<sup>1</sup> CERA is a subsidiary of RailAmerica, Inc.

<sup>2</sup> See 49 CFR 1152.2(c)(2)(i). Offerors simultaneously served the notice of intent on CERA.

SEA also states that CERA has determined that there are three bridges on the line segments that are 50 years old or older. The first bridge, located on the South Kokomo line segment at milepost 53.95, is a through truss structure crossing Wildcat Creek. The Indiana Department of Natural Resources Division of Historic Preservation and Archeology (SHPO) believes that the bridge meets the criteria for eligibility for inclusion in the National Register of Historic Places (National Register). The bridge, circa 1900, is a steel Pratt through truss, described as an intact turn of the century railroad structure featuring cut stone abutments and wingwalls. Based on the information provided the SHPO, the abandonment may affect characteristics of this bridge that qualify it for inclusion in the National Register.

The second bridge, located on the West Kokomo line segment at milepost 183.09, is an open deck, steel plate girder bridge that crosses Wildcat Creek. The third bridge is an open deck, wooden pile and steel plate girder bridge that crosses W. Defenbaugh Street at milepost 183.64. While both are at least 50 years old, SEA notes that no party has expressed concern over the disposition of these two bridges, presumably due to their having no distinguishing features or characteristics of historical value.

Based on this information, SEA recommends that CERA be required to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or are listed in the National Register until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). SEA also recommends that CERA be required to report back to SEA regarding any consultations with the SHPO and the public, and that CERA not be allowed to file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

No comments to the EA were received by the April 17, 2009 due date. Therefore, the environmental conditions recommended by SEA in the EA will be imposed.

In the EA, SEA indicated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On March 25, 2009, the City of Kokomo, IN, and Greenways Foundation, Inc., (collectively, proponents) filed a request for issuance of a notice of interim trail use (NITU) for the line segments under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29 and for a public use condition under 49 U.S.C. 10905. On April 13, 2009, the Indiana Trails Fund (ITF) late-filed a request for the issuance of a NITU for the line segments,<sup>3</sup> as well as a timely request for the issuance of a 180-day public use condition under 49 U.S.C. 10905.

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<sup>3</sup> The March 30, 2009 notice provided that any request for trail use/rail banking was due by April 9, 2009. But the Board accepts filings made after the due date when good cause is shown. Because there is no indication that ITF's late-filed request will prejudice any party, it will be accepted.

Proponents and ITF have submitted statements of willingness to assume financial responsibility for the 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, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. By filings dated April 3 and 14, 2009, CERA consents to negotiate with proponents and ITF for interim trail use. Thus, the requirements for issuance of a NITU have been met.

As noted above, proponents and ITF also have requested the imposition of a 180-day public use condition. Proponents and ITF request that CERA be prohibited from disposing of the corridor, other than tracks, ties and signal equipment, except for public use on reasonable terms, and that CERA be barred from removing or destroying any potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment exemption. Proponents state that the time period is needed to review title information and commence negotiations with CERA. ITF states that the time period is needed to complete negotiations with CERA's parent corporation, RailAmerica.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Proponents and ITF have met the requirements for imposing a public use condition.

Because the proponents and ITF have satisfied the requirements for issuance of a NITU and for a public use condition, issuance of a NITU and imposition of a public use condition would be appropriate commencing with the effective date of the exemption. However, an OFA takes priority over requests for a NITU or for a public use condition. Therefore, issuance and effectiveness of the NITU and the public use condition will be delayed until the OFA process has been completed. If an agreement is reached on the sale of the line segments for continued rail service, trail use and public use conditions would be unnecessary and unavailable. If no OFA is filed or if no agreement is reached on the OFA, the appropriate decision and notice of interim trail use or abandonment establishing the 180-day negotiating periods will be issued.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served on and published in the Federal Register on March 30, 2009, exempting the abandonment of the line segments described above, is subject to the conditions that CERA shall: (1) consult with and notify NGS at least 90 days prior to beginning salvage activities that could disturb or destroy any geodetic station markers; and (2) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or are listed in the National Register until completion of the section 106 process of the NHPA, report back to SEA regarding any consultations with the SHPO and the public, and not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.
3. The requests for issuance of a NITU and imposition of a public use condition are held in abeyance pending completion of the OFA process.
4. If the OFA process terminates, a decision effective on its service date will be issued to impose the interim trail use and public use conditions.
5. This decision is effective on its date of service.

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

Anne K. Quinlan  
Acting Secretary