

107.37, and extending 11,453 feet (2.17 miles) south to the point of switch of Central of Georgia Railroad Company Track No. 24 at V.S. 1120+32.5, WRA milepost XXB-109.55. The total length of trackage rights is 2.24 miles. The trackage rights were to become effective December 1, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,² and served on: Andrew C. Rambo, 104 Depot St., P. O. Box 129, Shelbyville, TN 37160.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: December 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.
Vernon A. Williams,
Secretary.

[FR Doc. 95-30390 Filed 12-12-95; 8:45 am]
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[Finance Docket No. 31102]

Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision modifying historic preservation condition imposed in 1988.

SUMMARY: The Commission has removed a condition, imposed in 1988 in connection with a sale of rail lines, that prevented the railroad from selling, destroying or modifying affected properties until completion of procedures under section 106 of the National Historic Preservation Act. 16 U.S.C. 470f.

EFFECTIVE DATE: January 12, 1996.

FOR FURTHER INFORMATION CONTACT: Louis Mackall, (202) 927-6056. [TDD for the hearing impaired: (202) 927-5721.]

² Legislation to terminate the Commission on December 31, 1995, is now pending enactment. Until further notice, the parties submitting pleadings should continue to use the current name and address.

SUPPLEMENTARY INFORMATION: On November 25, 1994, the Commission issued a Federal Register notice (59 FR 60656) concerning a proposal to reopen this proceeding to remove a condition that was imposed 6 years before in this rail line sale proceeding. We noted that the condition is inconsistent with our current procedures and may no longer be necessary. After reviewing the comments, we believe that our proposal should be adopted, and the condition modified.

As we previously noted, Wisconsin Central Ltd. (Wisconsin Central) purchased approximately 1800 miles of rail line from Soo Line Railroad Company (Soo), on October 11, 1987, pursuant to the class exemption for rail line sales, 49 CFR 1150.31 *et seq.*¹ We allowed the sale to proceed under the class exemption, but imposed a historic preservation condition. Rather than delaying the public benefit of the line sale in preserving rail service, we permitted the sale, but ordered the carrier not to take any steps that would affect historic properties until after the National Historic Preservation Act (NHPA) process could be completed. We imposed the following broad historic preservation condition:

The Commission will undertake a section 106 National Historic Preservation Act process in this matter. Pending completion thereof, [Wisconsin Central] shall refrain from taking any action that may jeopardize the historic integrity of sites and structures 50 years old or older.

Because of the large number of properties transferred, our Section of Environmental Analysis (SEA) attempted to reach a "programmatic agreement" (36 CFR 800.13) or "memorandum of agreement" (36 CFR 800.5) with the various State Historic Preservation Officers (SHPOs) involved and the Advisory Council on Historic Preservation (ACHP)² to limit this process to historic properties that might actually be adversely affected by the transfer, so that we could craft

¹ See *Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company*, Finance Docket No. 31102 (ICC served July 28, 1988). The exemption removes certain regulatory requirements associated with filing a formal application under 49 U.S.C. 10901.

² A programmatic agreement, negotiated between the ACHP and the responsible agency official in consultation with the appropriate SHPO, may be sued to determine proper historic preservation measures for projects when "effects on historic properties are similar and repetitive." The programmatic agreement is a contract that must be agreed to in writing by ACHP, the SHPO, and the agency, to be effective.

A memorandum of agreement (MOA) may be used, usually for a single project, where the agency and the SHPO agree on a course of action. ACHP must have an opportunity for comment.

appropriate mitigation conditions for them. As we detailed in our notice, however, this effort proved unsuccessful. We then used a case-by-case historic preservation process for each particular property that Wisconsin Central has subsequently sought to sell or demolish. This process has typically been very slow, and has often taken several years.

As we pointed out in our notice, the 1991 revisions to our historic preservation rules now require a historic preservation process in line sale cases only where, at the time of the transfer, the applicant plans to dispose of or alter properties subject to our jurisdiction that are 50 years or older.³

Implementation of Environmental Laws, 7 I.C.C.2d 807, 828 (1991). Carriers need not file a historic report for rail line sales "where . . . there are no plans to dispose of or alter properties subject to ICC jurisdiction that are 50 years old or older." 49 CFR 1105.8(b)(1). Nor are historic preservation conditions imposed absent such plans.

In our notice, we explained that, under our new rules, if a condition were imposed in a line sale case such as this one, it would apply only to properties that are used or useful in rail service and that the buyer has plans to dispose of or alter as a result of the acquisition and outside the context of a further abandonment or sale application.⁴ As we noted there, these rules have been applied in about 100 cases and have worked well in narrowing the focus of the historic review process to rail properties that may actually be affected by a sale transaction.

The broad condition imposed here has outlived its usefulness. Before Wisconsin Central can dispose of any of the properties it obtained from Soo in 1987, it must complete a lengthy historic preservation process for each particular property. This situation would continue indefinitely, because unless we amend the condition, it would cover all of Wisconsin Central's properties as long as it remains a railroad.⁵

³ These rule changes were made in consultation with the ACHP. It is unclear whether Wisconsin Central would have had to file a historic report or be subject to historic preservation conditions under this new standard, because it is not clear whether Wisconsin Central anticipated disposing of any properties at the time.

⁴ If subsequent abandonment or sale authority is required for the disposition of properties, the appropriate NHPA review will take place in the context of those proceedings.

⁵ We note that the problem relates to sales of properties that are not part of a line for which abandonment authority is sought. In abandonment proceedings, historic structures would be documented in any event.

The Comments

In response to our notice, we received comments only from ACHP and from the Minnesota and Michigan SHPOs. ACHP expresses disappointment that it and the Commission were not able to work out some kind of programmatic agreement. ACHP maintains that it would be premature to remove the condition without requiring that the Commission and the Wisconsin Central demonstrate that they have made a good faith effort to reach a programmatic agreement.

The Michigan SHPO argues that removal of the historic preservation condition now would nullify the Commission's compliance with the National Historic Preservation Act, and that the agency should continue to attempt to reach a suitable programmatic agreement. The Minnesota SHPO is concerned that there is at least one historic property on the 20-mile segment of the Wisconsin Central that is in Minnesota that may be adversely affected by the proposal.

Discussion and Conclusions

Eight years have now passed since Wisconsin Central acquired these properties. No comment has been filed challenging our assertion that from this point forward, Wisconsin Central's sale or demolition of properties should no longer be considered to be the result of the original purchase from the Soo. Rather, because of the passage of time, these decisions more appropriately are considered to be the normal result of the carrier's continuing ownership and management of these properties. If this transaction were to take place today, we would impose a historic condition only with regard to particular properties that the carrier identifies at the outset that it contemplates selling or altering. Thus, it would be unfair to continue to impose a greater burden on Wisconsin Central than we would now impose on other railroads.

There would be no point in entering into a programmatic or a memorandum of agreement now, nor do we believe that continuing the condition is necessary for compliance with NHPA. SEA and Wisconsin Central have already undertaken the historic preservation process for every property that the carrier has altered or disposed of since these properties were acquired. That should cover all of the properties that are affected by the sale. Future property dispositions, with the exception set forth in the following paragraph, will not be deemed to result from the sale.

Accordingly, we are reopening this proceeding and modifying the condition to require completion of the historic review process only with regard to specific properties for which that process is already underway or of which the carrier has already informed SEA that it plans to dispose.⁶ The disposal or alteration of other properties is outside the scope of this proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. This proposal should not have any adverse impact on small entities.

Decided: December 1, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,
Secretary.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed Consent Decree in *United States versus Wheeling-Pittsburgh Steel Corp.*, Civil Action No. 93-0195W (N.D.WVA), was lodged on December 6, 1995, with the United States District Court for the Northern District of West Virginia. The decree addresses the violations of Wheeling-Pittsburgh ("Wheeling-Pitt"), at its Follansbee Coke Plant in Follansbee, West Virginia, of the West Virginia State Implementation Plan ("SIP"), enforced pursuant to Section 113 of the Clean Air Act, 42 U.S.C. 7413, and certain reporting requirements contained in the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for Benzene Emissions from Coke By-Product Recovery Plants, 40 C.F.R. Part 61, Subpart L. Wheeling-Pitt violated the SIP by combusting coke oven gas which had not been desulfurized (as a result of unplanned outages at the Follansbee furnace by-product recovery plant, where hydrogen sulfide is stripped from coke oven gas during normal operations), by allowing raw coke oven gas to be emitted ("vented") into the ambient air during two emergencies caused by elevated gas pressure within coke oven batteries, and by occasional failures to comply with the SIP's pushing standards.

⁶ Wisconsin Central should submit a list of such properties within 30 days.

Under the proposed Consent Decree, Wheeling-Pitt will pay a civil penalty of \$700,000 and has agreed to detailed injunctive provisions. Wheeling-Pitt has abated all of the SIP violations. As to the SIP's desulfurization requirements, the Decree requires that, within 45 days of entry of the Decree, Wheeling-Pitt must have demonstrated full compliance with the SIP for seven consecutive days. Further, if the continuous emissions monitor ("CEM") used to measure compliance with the desulfurization standards should malfunction, and is out of service for two consecutive hours, then Wheeling-Pitt must use a backup CEM, or, failing that, must measure and report certain parameters of the desulfurization process so that EPA may gauge Wheeling-Pitt's compliance. The Decree contains, in addition, requirements for Wheeling-Pitt to install, and properly operate and maintain, a new hydrogen sulfide scrubber and CEM at the recovery plant. Finally, to ensure that the recovery plant is operated and maintained adequately, the Decree contains detailed requirements regarding preventative maintenance, spare parts inventories, and standard operating procedures.

As to pushing, Wheeling-Pitt must, within 45 days of entry of the Decree, demonstrate compliance with the SIP's pushing standard for five consecutive days. Further, the company must continue to monitor its pushing operations weekly until it has produced twelve consecutive weeks of data showing 100% compliance. To correct its violations of the SIP's pushing standards, Wheeling-Pitt has installed a number of improvements, including tighter boot seals at the top of the coke battery wall and a modified hood for the quench car. To abate its venting violations, Wheeling-Pitt has installed flares at its coke batteries, as now required under the Coke Oven Battery NESHAP.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States versus Wheeling-Pittsburgh Steel Corp.*, DOJ Ref. #90-5-2-1-1868.

The proposed consent decree may be examined at the office of the United States Attorney, 1100 Main Street, Suite 200, Wheeling, West Virginia 26003; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania