

**CENTRAL WESTERN RAILWAY CORPORATION
ABANDONMENT OF A RAILWAY LINE IN THE
STETTLER SUBDIVISION**

**Decision D 97-10
Application No. RU 97061**

1 BACKGROUND

Central Western Railway Corporation (CWR) filed an application with the Alberta Energy and Utilities Board (EUB) for approval to abandon two sections of railway line in the Stettler subdivision, namely miles 1.61 to 49.30 and miles 51.22 to 99.60. CWR requested Board approval for the abandonment of the rail line pursuant to section 95(1) of the Public Utilities Board Act.

The Stettler subdivision was bought by CWR from Canadian Pacific Railways in 1986. The sale of the Stettler subdivision to CWR transferred it to Provincial jurisdiction, removing it from Federal regulation. CWR operates the Stettler subdivision on a demand basis in response to shipping orders issued by the Canadian Wheat Board.

Most of the existing grain elevators along the Stettler subdivision have been closed down over the past several years, and the remaining two will cease to operate by the spring of 1998. With no grain to transport, CWR filed to abandon and salvage the Stettler subdivision.

Alberta Prairie Steam Tours (APST) operates passenger steam tour trains along the Stettler subdivision using facilities leased from the railway. If the track were removed, APST would have to cease operations. The Board received a number of letters voicing concerns over the demise of APST and requesting the Board to hold a public hearing into the matter.

CWR subsequently withdrew its application stating that section 95(1) did not apply to it and that it did not believe the Board had jurisdiction in this particular case. The Board is of the understanding that an agreement has been reached regarding the continuation of APST's tours along the Stettler subdivision, although not all parties have confirmed that with the Board.

Subsequent to the withdrawal of the application, the Board requested comments from parties who had made submissions, as to jurisdiction in this case, and has made its findings as set out below.

2 BOARD FINDINGS

The Board's jurisdiction regarding rail lines is set out in the *Public Utilities Board Act*. Section 1(i)(ii) of the Act defines "a system, works...for the conveyance of travellers or goods over a railway..." as a "public utility". The general jurisdiction over railways is restricted in subsequent sections of the Act. The Board's specific railway abandonment jurisdiction is prescribed by section 95(1) of the same Act, which reads:

"95(1) No railway company within the legislative authority of Alberta shall, without first obtaining approval of the Board, abandon any railway station or stop the sale of passenger tickets, or cease to maintain an agent to receive and discharge freight, at any station in Alberta at which passenger tickets are regularly sold or at which an agent is maintained."

CWR's Stettler subdivision operates as a small part of the larger western grain transportation system of the Canadian National (CN) and Canadian Pacific (CP) Railways. CWR's operations on the Stettler Subdivision consist only of grain transportation. This service, in essence, transports grain cars from a designated junction to a pick-up point at the request of CN or CP Rail. The tours operated by APST on the Stettler Subdivision are not a service of CWR, the public utility, and, therefore, are not within EUB authority to regulate.

In this instance, the specific wording in section 95(1) of the Act which circumscribes the Board's abandonment jurisdiction must be interpreted in light of the nature of CWR's operations, as outlined above. The section speaks of abandonment of a "railway station" or stopping "the sale of passenger tickets" or ceasing "to maintain an agent to receive and discharge freight, at any station in Alberta at which passenger tickets are regularly sold or at which an agent is maintained". First, CWR does not sell passenger tickets on the line, and so that portion of section 95(1) does not apply in this case. Second, the Board acknowledges that CWR does not "maintain an agent" at any "station" along the Stettler subdivision to receive and discharge freight on public request. The CWR employee who transports the freight along the subdivision is simply summoned by the demand order received from CN/CP. Therefore, **the Board has concluded that no EUB approval is required in this particular situation.**

The Board notes that, in the usual manner, this decision relates to the specific facts of this application. The Board will continue to review abandonment matters and will decide upon the need for abandonment approvals on a case-by-case basis.

DATED in Calgary, Alberta on 8 August 1997.

ALBERTA ENERGY AND UTILITIES BOARD

(Original signed by)

**J. P. Prince, Ph.D.
Presiding Member**

**G. J. Miller*
Member**

(Original signed by)

**L. D. Holizki, P.Eng.
Acting Member**

*** G. J. Miller was not available for signature but concurs with the contents and the issuance of this report.**