

SERVICE DATE – AUGUST 13, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 303 (Sub-No. 18X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—
IN POLK COUNTY, WIS.

Decided: August 12, 2020

By decision and notice of interim trail use or abandonment (NITU) served on March 13, 1998, the Board authorized Wisconsin Central Ltd. (WCL) to abandon a railroad line between milepost 47.83 in Dresser and milepost 63.08 in Amery, in Polk County, Wis., a distance of 15.25 miles (the Line). That decision also permitted the Wisconsin Department of Natural Resources (WDNR) to negotiate with WCL for an interim trail use/rail banking agreement for the Line.

Following several extensions of the NITU negotiating period, on February 9, 2004, WCL and the Wisconsin Department of Transportation (on behalf of WDNR) jointly submitted a filing stating that “[WDNR] made an initial timely offer to WCL” and that WCL “did sell the portion [of the Line] between milepost 49.6 and milepost 63.08.”¹

On July 27, 2020, WDNR, the current trail sponsor, filed a joint statement with DRFC Amery LLC (DRFC), for substitution of DRFC for WDNR as the trail sponsor of a “portion of station ground property located south of the former railroad operating right-of-way between Harriman Avenue and Keller Avenue South at Amery, Wisconsin, at and near Milepost No. 63.08, effective July 29, 2020.” The filing states that “[t]he property is commonly known as 102 Keller Avenue South, Amery, WI.” In the filing, DRFC “states its willingness to assume financial responsibility for the trail use property” and “acknowledges that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service.” WDNR and DRFC state that the substitution of trail sponsors “is effective on July 29, 2020.”

¹ In that filing, the parties also jointly requested an extension of the NITU for the remaining portion of the Line, between milepost 47.83 and milepost 49.6. The NITU for that portion was extended several more times, eventually expiring on July 3, 2011. See Wis. Cent. Ltd.—Aban. Exemption—in Polk Cty., Wis., AB 303 (Sub-No. 18X) (STB served Aug. 8, 2011). Since then, at WCL’s request, the deadline to consummate abandonment of that portion of the Line has been extended a number of times; the consummation deadline currently is September 2, 2020. See Wis. Cent. Ltd.—Aban. Exemption—in Polk Cty., Wis., AB 303 (Sub-No. 18X) (STB served Aug. 29, 2019).

On July 29, 2020, DRFC, identifying itself as the trail sponsor, submitted a filing stating that it “hereby vacates trail use of station ground right-of-way located south of the former rail operating right-of-way between Harriman Avenue and Keller Avenue South at Amery, Wisconsin, at and near Milepost No. 63.08, effective on July 29, 2020.”² DRFC states that the Board should issue a replacement NITU covering the remaining portion of the right-of-way subject to the interim trail use agreement.

Neither the substitution of DRFC for WDNR as trail sponsor nor the vacation of a portion of the current NITU can become effective without authorization from the Board. See 49 C.F.R. § 1152.29(d)(2)³, (f)(2). The Board declines to authorize a substitution of trail sponsor or issue a replacement NITU at this time. First, DRFC and WDNR have not provided an adequate description of the portion of the right-of-way at issue. DRFC and WDNR will be directed to clarify their description using applicable mileposts and distances, and provide a map outlining the boundaries of the portion of the right-of-way to which their request applies. DRFC and WDNR should also clarify what is meant by “station ground property” and whether the portion at issue encompasses the entire width of the right-of-way or a narrower section. Additionally, although in the July 27 filing DRFC “states its willingness to assume financial responsibility for the trail use property,” the statement of willingness to assume financial responsibility required of a substitute trail sponsor under 49 C.F.R. § 1152.29(f)(1)(ii) is set out at 49 C.F.R. § 1152.29(a), and DRFC’s statement does not meet those requirements. Finally, given that the July 27 and July 29 filings seem to indicate that DRFC intends to become the trail sponsor for a portion of the Line only to immediately vacate it, it should provide further explanation for its request.

It is ordered:

1. WDNR and DRFC are directed to provide the information and explanation described above by August 27, 2020.

2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

² In its July 29, 2020 filing, DRFC states that the right-of-way, “including the station ground right-of-way at [m]ilepost 63.08,” was sold by WCL to WDNR on January 21, 2004, for railbanking and interim trail use.

³ When a trail sponsor wishes to terminate interim trail use, the Board will “reopen the exemption proceeding, vacate the NITU, and issue a decision reinstating the [abandonment] exemption for that portion of the right-of-way” and will serve copies of that decision on, among others, the abandonment exemption applicant—in this case, WCL. See 49 C.F.R. § 1152.29(d)(2).