

SURFACE TRANSPORTATION BOARD

DECISION

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

WISCONSIN CENTRAL LTD. – ABANDONMENT EXEMPTION –
IN POLK COUNTY, WI

Decided: January 21, 2009

By decision and notice of interim trail use or abandonment (NITU) served on March 13, 1998, a 180-day period was authorized for the Wisconsin Department of Natural Resources (WisDNR) to negotiate an interim trail use/rail banking agreement with Wisconsin Central Ltd. (WCL) for a 15.25-mile line of railroad known as the Dresser-Amery Line between milepost 47.83 in Dresser and milepost 63.08 in Amery, Polk County, WI. Through a series of decisions, the negotiating period was extended through January 30, 2006.

On January 18, 2006, WisDNR¹ and Polk County (Petitioners) jointly filed a petition for an extension of the negotiating period for 180 days. WCL filed a response agreeing to the extension request. Petitioners stated that WCL had sold the portion of the line between milepost 49.6 and milepost 63.08 (presumably for use as a trail), but that the parties were still negotiating on the portion between milepost 47.83 and milepost 49.6, and more time was needed to finalize negotiations. Accordingly, the negotiating period for that portion of the line was extended until July 29, 2006. The negotiating period for that portion of the line was further extended through January 14, 2009, by a series of decisions, the most recent of which was served on July 15, 2008.

On January 13, 2009, WDOT, on behalf of Petitioners, filed a petition for an extension of the negotiating period for the remaining portion of the line for 180 days. Petitioners state that the parties are still negotiating and more time is needed to finalize negotiations. WCL filed a response agreeing to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended.² Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d

¹ The Wisconsin Department of Transportation (WDOT) filed on behalf of WisDNR.

² See Rail Abandonments – Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for that portion of the line between milepost 47.83 and milepost 49.6 for a period of 180 days from January 14, 2009 (until July 13, 2009). Given the time that has elapsed since abandonment was authorized, the parties are again urged to conclude their negotiations so that further extensions are not necessary.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Petitioners' request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended for that portion of the line between milepost 47.83 and milepost 49.6 until July 13, 2009.
3. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary