

SERVICE DATE – JULY 9, 2010

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: July 8, 2010

In this decision, an extension is granted for negotiating a trail use/rail banking agreement. 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, Wis. In a series of decisions, the negotiating period was extended through January 30, 2006.

On January 18, 2006, WisDNR¹ and Polk County, Wis. (Petitioners) jointly filed a petition for an extension of the negotiating period for 180 days. Petitioners stated that WCL had sold to WisDNR the portion of the line between milepost 49.6 and milepost 63.08, but that the parties were still negotiating on the portion between milepost 47.83 and milepost 49.6 (the Segment) and needed more time to finalize negotiations on the Segment. WCL filed a response agreeing to the extension request. Accordingly, the negotiating period for the Segment was extended. Further decisions, the most recent of which was served on March 4, 2010, extended the negotiating period until July 8, 2010.

Prior to the most recent extension, in a letter filed on January 25, 2010, WDOT explained that the parties had not yet reached a trail use agreement for the Segment because of the potential for a quarry being opened along the Segment. In that letter, WDOT stated that if the quarry does not materialize as a rail customer, WCL will continue negotiations, which the parties expect would result in successful banking of the Segment.

On July 1, 2010, WDOT, on behalf of Petitioners, filed a petition for an extension of the negotiating period for 180 days. In the petition, WDOT explains that, since the last extension of the NITU negotiating period, it has received no further information regarding the approval of a permit for the quarry. WCL has agreed to continue trail use negotiations for the Segment.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations,

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

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 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. 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 July 8, 2010 (until January 4, 2011).

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 negotiation period is granted.
2. The NITU negotiation period is extended for that portion of the line between milepost 47.83 and milepost 49.6 until January 4, 2011.
3. This decision is effective on the date of service.

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

² See Rail Abandonments—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).