

SERVICE DATE – OCTOBER 6, 2020

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: October 5, 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.”<sup>1</sup>

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 for 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” (the Subject ROW). On July 29, 2020, DRFC filed a request seeking to vacate trail use for the Subject ROW.<sup>2</sup> DRFC stated that the Board should issue a replacement NITU covering the remaining portion of the right-of-way subject to the interim trial use agreement.

By decision served on August 13, 2020, the Board directed WDNR and DRFC to clarify the description of the Subject ROW, noted that DRFC’s statement of willingness did not meet

---

<sup>1</sup> 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, 2021. See Wis. Cent. Ltd.—Aban. Exemption—in Polk Cnty., Wis., AB 303 (Sub-No. 18X) (STB served Aug. 31, 2020).

<sup>2</sup> Although DRFC’s filing purported to vacate trail use, vacation of trail use cannot become effective without authorization from the Board.

the requirements at 49 C.F.R. § 1152.29(a), and directed DRFC to further explain its apparent intent to become the trail sponsor for the Subject ROW only to immediately vacate it.

On August 27, 2020, DRFC filed a response which, among other things, described the Subject ROW as “a triangular parcel . . . approximately 200 feet southwest of Milepost 63 (at approximately Milepost 62.96),” (DRFC Letter 1), and included additional maps illustrating the Subject ROW’s boundaries. DRFC states that it owns the real estate parcels underlying the Subject ROW, that it seeks to use that real estate, and that the Subject ROW is not needed for interim trail use. DRFC states that WDNR agreed to terminate trail use on the Subject ROW but did not want to do so in its own name, and that WDNR was willing to have DRFC substitute for it as trail user and then have DRFC terminate trail use. (*Id.* at 2.) Aside from joining in the initial request to substitute trail sponsor, WDNR has not provided additional comment.

In its requests, DRFC seeks to become trail sponsor for the Subject ROW and have the NITU for the Subject ROW vacated, effective simultaneously. DRFC has explained the reason for this unusual request, and it is clear that DRFC does not desire or intend to become a trail sponsor. Rather, it sought to become a trail sponsor only so that it, rather than WDNR, might request vacation of the NITU for the Subject ROW. WDNR joined in the request to substitute trail sponsor; DRFC has explained that WDNR agrees to the termination of trail use on the Subject ROW; and the requirements of § 1152.29(d)(2) have been substantially met by the collective filings. Rather than issue a replacement NITU with DRFC as trail sponsor in this decision only to simultaneously vacate that NITU, it is appropriate in the specific and unusual circumstances presented in this case to simply vacate the NITU served on March 13, 1998, with respect to the Subject ROW, effective on the service date of this decision. A replacement NITU for the remainder of the Line with WDNR as interim trail sponsor will be issued. *See* 49 C.F.R. § 1152.29(d)(2).

Because the NITU is being vacated with respect to the Subject ROW, WCL’s abandonment exemption authority for the Subject ROW will be reinstated. *See* 49 C.F.R. § 1152.29(d)(2); *see also* Union Pac. R.R.—Aban. Exemption—in Oconto Cnty., Wis., AB 33 (Sub-No. 104X) (STB served Jan. 14, 2015). If WCL chooses to abandon the Subject ROW, WCL must file a notice of consummation as set forth under the Board’s rules at 49 C.F.R. § 1152.29(e)(2) by December 4, 2020. If WCL does not timely file a notice of consummation, and there are no legal or regulatory barriers to consummation, the abandonment authority will automatically expire.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on March 13, 1998, is vacated with respect to the Subject ROW.
3. A replacement NITU for the remainder of the Line with WDNR as interim trail sponsor is issued.

4. The abandonment exemption issued on March 13, 1998, as conditioned, is hereby reinstated for the Subject ROW.

5. If WCL chooses to abandon the Subject ROW, notice of consummation must be filed by December 4, 2020.

6. This decision is effective on its service date.

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