

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35301

WISCONSIN DEPARTMENT OF TRANSPORTATION—PETITION FOR DECLARATORY  
ORDER—RAIL LINES IN JANESVILLE, ROCK COUNTY, WI

Decided: December 2, 2009

On October 28, 2009, the Wisconsin Department of Transportation (WisDOT) filed a petition for declaratory order asking the Board to determine that it does not have “jurisdiction” over WisDOT’s purchase of various rail segments totaling 7.33 miles owned by the Wisconsin & Southern Railroad Co. (WSOR) in and near the City of Janesville, Rock County, WI, because the parties have structured the transaction to comport with the terms and conditions of Maine, DOT—Acq. Exemption, ME Central R.Co., 8 I.C.C. 2d 835 (1991) (State of Maine).<sup>1</sup>

According to the petitioner, WSOR or its predecessor, the Wisconsin & Calumet Railroad (WICT),<sup>2</sup> has been operating over the lines for approximately 23 years. WSOR eventually purchased the lines in 2004 from the Iowa, Chicago & Eastern Railroad Corporation (IC&E)<sup>3</sup> and continues to operate over the segments.

As part of the 2004 sale, IC&E retained local and overhead trackage rights over the lines. The Dakota Minnesota & Eastern Railroad Corporation (DM&E), which has acquired control of IC&E, filed a letter on November 17, 2009, stating that it continues to possess these trackage

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<sup>1</sup> While WisDOT uses the term “jurisdiction,” in fact it may only seek a finding that the Board does not have regulatory authority over the proposed transaction. The Board will continue to have jurisdiction over rail property even if it concludes that it does not have regulatory authority over a proposed transaction. See Friends of the Aquifer, City of Hauser, ID, Hauser Lake Water District, Cheryl L. Rodgers, Clay Larkin, Kootenai Environmental Alliance, Railroad and Clearcuts Campaign, STB Finance Docket No. 33966, slip op. at 4 (STB served Aug. 15, 2001).

<sup>2</sup> WICT was merged into WSOR in Wisconsin & Southern Railroad Co. – Corporate Family Transaction Exemption – Wisconsin and Calumet Railroad Company, STB Finance Docket No. 33450 (STB served Sept. 5, 1997).

<sup>3</sup> Wisconsin & Southern Railroad Co.–Acquisition Exemption–Iowa, Chicago & Eastern Railroad Corporation, STB Finance Docket No. 34464 (STB served June 30, 2004).

rights and that it will file a reply to the petition by November 25, 2009. On November 25, 2009, DM&E filed another letter, this time stating that it will file its reply by December 9, 2009.

WisDOT has asked that its petition for declaratory order be given expedited consideration so that it may spend the funds appropriated for this transaction by the end of the calendar year. WisDOT has shown good cause for granting expedited consideration. DM&E has had notice of this transaction at least since November 17, 2009. In light of the time DM&E has had to review the petition and the expedited consideration sought by WisDOT, DM&E is directed to submit its reply, if any, by December 4, 2009.

It is ordered:

1. DM&E's reply is due by December 4, 2009.
2. This decision is effective on its date of service.

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