

40213
DO

SERVICE DATE – AUGUST 27, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-303 (Sub-No. 20X)

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

Decided: August 26, 2009

On November 17, 1999, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the State of Wisconsin Department of Natural Resources (WisDNR) to negotiate an interim trail use/rail banking agreement with Wisconsin Central Ltd. (WCL) for a 1.63-mile line of railroad between milepost 198.37 and milepost 200 in Green Bay, Brown County, WI. The negotiating period under the NITU was extended several times for the portion of the right-of-way from milepost 198.37 to milepost 199.84. The latest extension decision, served on March 19, 2009, extended the negotiation period until August 27, 2009.

On August 21, 2009, WisDNR filed a motion for an extension of the NITU negotiating period with respect to the portion of the line between mileposts 198.37 and 199.84 for an additional 180 days. WISDNR states that negotiations are currently continuing in good faith and that the negotiations have addressed including the City of Green Bay as an NIU user, to replace WisDNR. On August 25, 2009, WCL filed its response stating that it is agreeable to the requested extension of the negotiation period under the NITU.

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 by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, extension of the NITU negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended for an additional 180 days from August 27, 2009 (until February 23, 2010), for the portion of the right-of-way between milepost 198.37 and milepost 199.84. 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 decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. WisDNR's request to extend the NITU negotiation period is granted.
2. The negotiation period under the NITU is extended to February 23, 2010, for the portion of the right-of-way between milepost 198.37 to milepost 199.84.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary