

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-303 (Sub-No. 25X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—
IN LANGLADE, MENOMINEE AND SHAWANO COUNTIES, WI

Decided: November 7, 2008

This decision extends the interim trail use negotiating period for a 3.4-mile portion of the railroad line authorized for abandonment in this proceeding.

By decision and notice of interim trail use or abandonment (NITU) served on January 5, 2001, the Board granted the petition for exemption filed by Wisconsin Central Ltd. (WCL) for abandonment of a 34.3-mile line of railroad, known as the White Lake-Shawano Line, between milepost 280 north of White Lake and milepost 314.3 north of Shawano, in Langlade, Menominee, and Shawano Counties, WI. The exemption was subject to environmental, historic preservation, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period, until July 4, 2001, for the Wisconsin Department of Natural Resources (WisDNR) to negotiate an interim trail use/rail banking agreement with WCL. The NITU negotiating period has been extended several times for portions of the line and, as a result, WCL reached an agreement with WisDNR for WisDNR to purchase the right-of-way from milepost 280 to milepost 287. Also, by letter filed on June 5, 2002, WCL informed the Board that it had consummated the abandonment of the line between milepost 287 and milepost 299.5.

By decision and notice of interim trail use or abandonment served on December 30, 2002, a NITU request was granted for the Stockbridge-Munsee Community (the Tribe) to negotiate an interim trail use/rail banking agreement with WCL for a portion of the right-of-way approximately from milepost 303 to milepost 306.4 in Shawano County until June 28, 2003. In a series of decisions issued from June 26, 2003, to April 29, 2008, the negotiating period was extended until October 26, 2008. On October 16, 2008, the Tribe filed a request for extension of the NITU for that portion of the line for 180 days. The Tribe states that negotiations are still continuing. WCL concurs in the request to extend the NITU.¹

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

¹ The April 29, 2008 decision had also granted WisDNR's request for an extension of the NITU negotiating period until October 26, 2008, for the portion of the line between milepost 299.5 and milepost 314.3.

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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for an additional 180 days, until April 24, 2009. Given the length of time the parties have had to negotiate a trail use agreement, however, the negotiation parties are 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. The Tribe's request to extend the NITU negotiating period is granted for that portion of the right-of-way approximately from milepost 303 to milepost 306.4 in Shawano County, WI.
2. The NITU negotiating period for that portion of the right-of-way is extended until April 24, 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

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