

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-303 (Sub-No. 29X)

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

Decided: December 12, 2005

Wisconsin Central Ltd. (WCL) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 4.62-mile line of railroad, from milepost 235.84 on the Pembine Sub (formerly milepost 249.38 on the old Shawano Sub), near Crandon, to the end of the track at milepost 231.22 on the Pembine Sub (formerly milepost 254.00 on the old Shawano Sub), in Forest County, WI. Notice of the exemption was served and published in the Federal Register on October 13, 2005 (70 FR 59802-03). The exemption was scheduled to become effective on November 12, 2005. By decision served on November 10, 2005 (November 10 decision), the proceeding was reopened at the request of the Board’s Section of Environmental Analysis, and the exemption was made subject to environmental conditions.

On October 20, 2005, the Wisconsin Department of Natural Resources, acting through the Wisconsin Department of Transportation (collectively, the State), filed a request for the issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. The State has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on October 25, 2005, WCL indicated a willingness to negotiate with the State for interim trail use/rail banking.¹

Because the State’s request complies with the requirements of 49 CFR 1152.29 and WCL is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, WCL may fully abandon the line subject to any outstanding conditions.

¹ In its notice of exemption, the State submitted a statement of willingness to assume financial responsibility that did not fully comply with 49 CFR 1152.29. The State amended its statement on November 23, 2005. In a response filed on November 30, 2005, WCL stated that it does not object to the State’s interim trail use/rail banking request, and that it intends to negotiate with the State for a possible agreement.

See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The request for a NITU under 16 U.S.C. 1247(d), as amended by subsequent filing, is accepted.
3. Upon reconsideration, the exemption for the abandonment of the line described above covered by the notice served and published in the Federal Register on October 13, 2005, and conditioned in the November 10 decision, is modified to the extent necessary to implement interim trail use/rail banking as set forth below for a period of 180 days from the service date of this decision and notice.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. If an agreement for interim trail use/rail banking is reached by June 11, 2006, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

8. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary