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SERVICE DATE - SEPTEMBER 26, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-402 (Sub-No. 8X)

FOX VALLEY & WESTERN LTD.–ABANDONMENT
EXEMPTION–IN BROWN AND OUTAGAMIE COUNTIES, WI

Decided: September 20, 2002

By decision and notice of interim trail use or abandonment (NITU) served on March 2, 2001, Fox Valley & Western LTD. (FVW) was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad extending from milepost 4.78 west of Green Bay to milepost 38.98 in New London, in Brown and Outagamie Counties, WI. The exemption was made subject to employee protective, historic, environmental, and other conditions. The NITU authorized FVW to negotiate an interim trail use rail/banking agreement with the Wisconsin Department of Transportation, on behalf of the Wisconsin Department of Natural Resources (WisDNR), pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ The March 2 decision also stated that, if consummation had not been effected by FVW's filing of a notice of consummation, by March 2, 2002, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. At the request of FVW and WisDNR, the negotiating period under the NITU was extended to August 24, 2002, by decisions served September 5, 2001, and February 25, 2002. By decision served August 20, 2002, the negotiating period under the NITU was extended at the request of FVW and WisDNR to February 18, 2003, for the portion of the right-of-way between milepost 14.9 to milepost 38.98, and FVW was authorized to abandon the remaining portion of the right-of-way between milepost 4.78 and milepost 14.9 if the environmental conditions imposed in this proceeding have been met.

On September 11, 2002, FVW filed a request to extend the deadline for the filing of its notice of consummation for that portion of the line extending between milepost 4.78 and milepost 14.9 until July 31, 2005. FVW states that the section 106 historical review process has not yet resulted in a Memorandum of Agreement (MOA), and that it and the Board's Section of Environmental Analysis

¹ By decision served on August 15, 2001, the historic condition was modified to require that FVW retain its interest in and take no steps to alter the integrity of the rail line located within the boundaries of the Oneida Indian Reservation (between milepost 4.78 and milepost 14.9) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, which will determine the effect on cultural and historic resources.

have been working to finalize an MOA expeditiously. FVW states that the delay in finalizing the MOA has pushed back its plans for salvaging the line, which was originally intended to begin in the late fall of 2001 or early winter 2002. FVW states that the historical review process has prevented the salvage of the right-of-way, and it projects, due to capital needs and requirements, that it might not undertake salvage until as late as the year 2005.

FVW has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation in this proceeding. Accordingly, the request will be granted.²

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. FVW's request for an extension of time to exercise the abandonment authority is granted.
2. The authority to abandon the line segment between milepost 4.78 and milepost 14.9 must be exercised no later than July 31, 2005.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

² It is not clear that it is necessary to issue a decision to extend the deadline for consummation. Section 1152.29(e)(2) of the Board's regulations (49 CFR 1152.29(e)(2)) requires the filing of a notice of consummation within 1 year from the service date of the decision authorizing abandonment only if there are no legal or regulatory barriers to consummation. The fact that the historic condition has not been satisfied is such a barrier, and certain other environmental conditions would likely not be met until just before the time of salvage, but issuance of a decision extending the deadline will provide additional certainty.