

SERVICE DATE – MARCH 24, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

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

Decided: March 22, 2010

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 August 27, 2009, extended the negotiation period until February 23, 2010.

On February 18, 2010, WisDNR on behalf of the City of Green Bay (Green Bay) 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 since the latest extension, Green Bay has agreed to accept financial responsibility for the right-of-way involved. Green Bay submitted a statement of willingness to assume full 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 acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service.<sup>1</sup> In a letter filed on February 19, 2010, WCL states that it agrees to negotiate for trail use with Green Bay.<sup>2</sup>

Because Green Bay'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 for that portion of the right-of-way from milepost 198.37 to milepost 199.84. 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

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<sup>1</sup> The August 27, 2009 decision noted that the negotiations had addressed including Green Bay as a NITU user, to replace WisDNR.

<sup>2</sup> In its letter, WCL refers to a petition filed by WisDNR on February 19, 2010. WisDNR filed its petition to renew the NITU on February 18, 2010.

fully abandon the line, subject to compliance with the environmental conditions imposed in the November 17, 1999 decision. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

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

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, the decision and notice served on November 17, 1999, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit Green Bay to negotiate with WCL for trail use for that portion of the subject line between milepost 198.37 to milepost 199.84 for a period of 180 days commencing from the service date of this decision and notice (until September 20, 2010) and subject to the environmental conditions imposed in the November 17 decision.
3. 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.
4. Interim trail use/rail banking is subject to the future restoration of rail operations and to the user's continuing to meet the financial obligations of the right-of-way.
5. 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.
6. If an agreement for interim trail use/rail banking is reached by September 20, 2010, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line, subject to the previously imposed environmental conditions.
7. This decision is effective on its service date.

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