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SERVICE DATE - MARCH 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 30724 (Sub-No. 2)

WISCONSIN AND CALUMET RAILROAD COMPANY, INC.--  
NOTICE OF INTERIM TRAIL USE AND TERMINATION OF MODIFIED CERTIFICATE

Decided: March 4, 1998

In 1985, the Interstate Commerce Commission (ICC) issued a modified certificate of public and necessity to the Wisconsin and Calumet Railroad Company (WICT) under 49 CFR 1150 Subpart C.<sup>1</sup> The modified certificate, in part, authorized WICT to operate a 58.95-mile line segment acquired by the State of Wisconsin Department of Transportation (WISDOT) and the South Central Wisconsin Rail Transit Commission (SCWRTC) following consummation of the abandonment in Illinois Central Gulf R. Co.--Abandonment--Betw. Freeport, IL, and Madison, WI, Docket No. AB-43 (Sub-No. 28) (ICC served Dec. 22, 1980).<sup>2</sup>

By petition filed December 24, 1997, the WISDOT, on behalf of the Wisconsin Department of Natural Resources and the Illinois Department of Natural Resources, seeks issuance of a notice of interim trail use (NITU) under section 1247(d) of the National Trails System Act (Trails Act) for the purpose of using or preserving the right-of-way for interim public transportation and recreational purposes (including highway, pedestrian, and trail uses).

Our rules for termination of service under a modified certificate found at 49 CFR 1150.24 state:

The duration of the service may be determined in the contract between the State and the operator. An operator may not terminate service over a line unless it first provides 60 days' notice of its intent to terminate the service. The notice of intent must be:

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<sup>1</sup> See Wisconsin and Calumet Railroad Company, Inc.--Notice of Modified Certificate of Public Convenience and Necessity, Finance Docket No. 30724 (ICC served Sept. 17, 1985).

<sup>2</sup> The modified certificate also included a 79.6-mile line segment acquired by WISDOT pursuant to an order issued January 21, 1980, in Case No. 77 B 8999, In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (U.S. Dist. Ct. Northern District of Illinois, Eastern Division). That portion of the modified certificate was terminated and a notice of interim trail use was issued in Wisconsin and Calumet Railroad Company, Inc.--Notice of Interim Trail Use and Termination of Modified Certificate, Finance Docket No. 30724 (Sub-No. 1) (ICC served Aug. 8, 1989).

(a) Filed with the State and the Board, and

(b) Mailed to all persons that have used the line within the 6 months preceding the date of the notice.

In this proceeding, the line of railroad involved was acquired after a consummated abandonment. The line was leased and/or operated by several entities prior to WICT's obtaining a modified certificate in 1985. When the modified certificate was issued, the line returned to the national rail transportation system and became subject to ICC and then Board jurisdiction. That jurisdiction ceased when the modified certificate was terminated on April 15, 1997. The notice of termination filed by WICT is self-executing.<sup>3</sup>

No Board action is required to cancel the modified certificate. Neither the applicable regulation, precedent or Board practice provide for any agency action following the filing of a notice of termination of service under 49 CFR 1150.24. Our jurisdiction over the involved line ended on April 15, 1997, when WICT ceased operations.<sup>4</sup>

The facts presented here are distinguishable from the facts in Finance Docket No. 30724 (Sub-No. 1). The notice of termination filed in that case simultaneously stated WISDOT's intent to invoke interim trail use and rail banking under the Trails Act while the line was still under the jurisdiction of the ICC. The Sub-No. 1 proceeding presented a case of clear intent to implement trail use and rail banking while the line was still a part of the national rail transportation system. We will deny WISDOT's request for a NITU.<sup>5</sup>

It is ordered:

1. The request for issuance of a notice of interim trail use is denied for lack of jurisdiction.

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<sup>3</sup> On February 14, 1997, WICT gave notice that it would cease operations on April 15, 1997.

<sup>4</sup> On March 3, 1998, Village of Monticello, Green County Rail Preservation Committee, Carol Strause, Wade Wittenwyler, Kenneth Tschudy, Irvin Eichorst, Richard Lahr, Cascade Rail Corp., Inc., and Town of Montrose (collectively, Monticello et al.), filed a petition to intervene in opposition to issuance of a notice of interim trail use and apparently in support of resumption of rail service. Given the finding that the Board no longer has jurisdiction over the line, the petition will be denied as moot.

<sup>5</sup> It should be noted that, while the Board lost jurisdiction over the line when the modified certificate was terminated, the parties are, of course, free to come to a trail use agreement. They would simply be without the benefits provided by the Trails Act.

2. The petition filed on March 3, 1998, by Monticello et al., is denied as moot.
3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary