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SERVICE DATE – MARCH 4, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-303 (Sub-No. 18X)

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

Decided: March 4, 2010

By decision and notice of interim trail use or abandonment (NITU) served on March 13, 1998, a 180-day period was authorized for the Wisconsin Department of Natural Resources (WisDNR) to negotiate an interim trail use/rail banking agreement with Wisconsin Central Ltd. (WCL) for a 15.25-mile line of railroad known as the Dresser-Amery Line between milepost 47.83 in Dresser and milepost 63.08 in Amery, Polk County, WI. Through a series of decisions, the negotiating period was extended through January 30, 2006.

On January 18, 2006, WisDNR¹ and Polk County, WI (Petitioners) jointly filed a petition for an extension of the negotiating period for 180 days. WCL filed a response agreeing to the extension request. Petitioners stated that WCL had sold the portion of the line between milepost 49.6 and milepost 63.08 (presumably for use as a trail), but that the parties were still negotiating on the portion between milepost 47.83 and milepost 49.6 (the Segment), and more time was needed to finalize negotiations. Accordingly, the negotiating period for the Segment was extended until July 29, 2006. The negotiating period for the Segment was further extended through January 9, 2010, by a series of decisions, the most recent of which was served on July 29, 2009. The most recent decision directed the parties to explain why a trail use agreement on the Segment has not been reached.

On January 5, 2010, WDOT, on behalf of Petitioners, filed a petition for an extension of the negotiating period for the Segment for 180 days. In a letter filed on January 25, 2010, WDOT explained that the parties have not yet reached a trail use agreement for the Segment because of the potential for a quarry being opened along the Segment. WDOT states that if the quarry does not materialize as a rail customer, then WCL will continue negotiations with DNR for the Segment, which the parties expect would result in successful banking of the Segment. WCL has agreed to continue trail use negotiations for the Segment.

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,

¹ The Wisconsin Department of Transportation (WDOT) filed on behalf of WisDNR.

the Board retains jurisdiction and the NITU negotiating period may 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 that portion of the line between milepost 47.83 and milepost 49.6 for a period of 180 days from January 9, 2010 (until July 8, 2010).

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

It is ordered:

1. Petitioners' request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended for that portion of the line between milepost 47.83 and milepost 49.6 until July 8, 2010.
3. This decision is effective on the date of service.

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

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