

SERVICE DATE - AUGUST 20, 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: August 19, 2002

By decision and notice of interim trail use or abandonment (NITU) served 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.¹ 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). At the request of FVW and WisDNR, the negotiating period under the NITU was extended by decisions served September 5, 2001, and February 25, 2002. The latest extension is scheduled to expire on August 24, 2002.

On August 12, 2002, FVW and WisDNR jointly filed a petition for an extension of the negotiating period for an additional 180 days for a portion of the right-of-way between milepost 14.9 and milepost 38.98. FVW states that it no longer wishes to negotiate for the portion of the right-of-way between milepost 4.78 and milepost 14.9. The parties state that WisDNR has made an initial timely offer to FVW. However, the parties indicate that, while negotiations are currently continuing in good faith, more time is needed to finalize negotiations for the remainder portion of the right-of-way.

Where, as here, the carrier is willing to continue trail use negotiations between milepost 14.9 and milepost 38.98, the Board may extend the NITU negotiating period for that segment. Under the circumstances, an extension is warranted and will promote the establishment of trails and rail banking

¹ The exemption was made subject to employee protective, historic, environmental, and other conditions. By decision served 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 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.

consistent with the Trails Act.² Accordingly, the NITU negotiation period for that portion of the line between milepost 14.9 and milepost 38.98 will be extended for an additional 180 days from August 24, 2002 (until February 18, 2003).

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

It is ordered:

1. The joint motion to extend the NITU negotiating period for that portion of the line from milepost 14.9 and milepost 38.98 is granted. The remaining portion of the line between milepost 4.78 to milepost 14.9 may be fully abandoned on August 24, 2002, if the environmental conditions imposed in this proceeding have been met.

2. The NITU negotiating period for that portion of the line from milepost 14.9 to milepost 38.98 is extended to February 18, 2003.

3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary

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