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SERVICE DATE – NOVEMBER 19, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-303 (Sub-No. 25X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—
IN LANGLADE, MENOMINEE AND SHAWANO COUNTIES, WI

Decided: November 18, 2004

By decision and notice of interim trail use or abandonment (NITU) served on January 5, 2001, the Board granted the petition for exemption filed by Wisconsin Central Ltd. (WCL) for abandonment of a 34.3-mile line of railroad known as the White Lake-Shawano Line, between milepost 280 north of White Lake and milepost 314.3 north of Shawano, in Langlade, Menominee, and Shawano Counties, WI. The exemption was subject to environmental, historic preservation, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period, until July 4, 2001, for the Wisconsin Department of Natural Resources (WisDNR) to negotiate an interim trail use/rail banking agreement with WCL. WCL was also required to file a notice of abandonment consummation by January 5, 2002. The decision was scheduled to become effective on February 4, 2001. Subsequently, by decision served on February 2, 2001, the January 5 decision was stayed until further order with respect to trail use/rail banking in Menominee County that was authorized. In all other respects, the January 5 decision took effect as scheduled on February 4, 2001. In a decision served on July 3, 2001, as corrected on July 10, 2001, the negotiating period under the NITU was extended until December 31, 2001, with the stay remaining in effect for the portion of the line in Menominee County. By decisions served on December 28, 2001, and February 27, 2002, the NITU negotiating period and the deadline to exercise abandonment authority were extended to May 31, 2002.¹ By decisions served June 7, 2002, November 27, 2002, May 23, 2003, November 21, 2003, and May 19, 2004, the NITU negotiating period except for that portion of the line in Menominee County (between mileposts 287 and 299.5) was extended until November 16, 2004.² On November 12, 2004, WisDNR and

¹ A petition for judicial review of the Board's decision allowing interim trail use/rail banking in Menominee County was filed in the United States Court of Appeals for the District of Columbia Circuit in Menominee Indian Tribe of Wisconsin et al. v. STB et al., No. 01-1100 (D.C. Cir. filed Mar. 2, 2001). On May 24, 2002, that Court granted the parties' joint unopposed motion to dismiss the petition. The Board's stay is now moot.

² By letter filed on June 5, 2002, WCL informed the Board that it has consummated the
(continued...)

WCL filed a joint petition for extension of the NITU for that portion of the right-of-way from milepost 299.5 to milepost 314.3 for 180 days. Petitioners state that negotiations are continuing.

By decision and notice of interim trail use or abandonment served on December 30, 2002, a NITU request was granted for the Stockbridge-Munsee Community (the Tribe) to negotiate an interim trail use/rail banking agreement with WCL for a portion of the right-of-way approximately from milepost 303 to milepost 306.4 in Shawano County until June 28, 2003. By decisions served on June 26, 2003, December 24, 2003, and May 19, 2004, the negotiating period was extended until November 16, 2004. On November 15, 2004, the Tribe filed a request for extension of the NITU for 180 days, until May 15, 2005. The Tribe states that negotiations are still continuing. WCL concurs in the request to extend the NITU.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.³ 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., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended until May 15, 2005.

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

It is ordered:

1. The requests to extend the NITU negotiating period are granted.
2. The NITU negotiating periods are extended until May 15, 2005.

²(...continued)

abandonment of the line between milepost 287 and milepost 299.5. In a subsequent pleading, the parties reported that WCL has reached an agreement with WisDNR for WisDNR to purchase the right-of-way from milepost 280 to milepost 287.

³ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary