

225322

July 1, 2009

Hon. Anna K. Quinlan,  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

VIA ELECTRONIC FILING

**RE: STB Ex Parte No. 690  
Twenty Five Year of Rail Banking: A Review and Look Ahead**

Dear Ms. Quinlan:

On behalf of the Wisconsin Department of Transportation, I am submitting for electronic filing comments on the above-entitled matter before the Surface Transportation Board on July 8, 2009.

Although written comments were requested by June 30, 2009, WisDOT respectfully requests that you consider our comments despite our late filing.

Sincerely yours,

*Kathleen Chung*

Kathleen Chung, State Bar no. 1032802  
Assistant General Counsel

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423

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STB Ex Parte No. 690

Twenty-Five Year of Rail Banking:  
A Review and Look Ahead

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Comments  
Wisconsin Department of Transportation

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The Wisconsin Department of Transportation (“WisDOT”) is the designated state agency in rail matters in the State of Wisconsin. 49 U.S.C. Appx. § 1654(a) (formerly § 1654(j)), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats. WisDOT submits these comments on the matter before the Surface Transportation Board (“STB”) on the matter entitled, “Twenty-five years of Rail Banking: A Review and Look Ahead,” STB Ex Parte No. 690.

In Wisconsin, there are more than 600 miles of rail line that has been “banked” under Section 8(d) of the National trails System Act. Of these miles, almost all have been converted to trails and are used as recreational trails. There are a few rail-banked-miles that are used for other transportation purposes, such as a concurrent use along a state highway. (See Exhibit A, List of Rail Banked Lines in Wisconsin).

Most trail sponsors in Wisconsin are some type of governmental agency, including the Wisconsin Department of Natural Resources, cities and counties. Three sponsors are quasi-governmental transit authorities.

In recent years, WisDOT has received an increasing number and frequency of inquiries from shippers, railroads and communities regarding the possible reactivation of a banked rail line. Although no lines have been reactivated to date, WisDOT is very interested in the process for reactivation of a banked rail line, and seeks guidance on this process from the Board, and supports efforts to make the process uniform and useful.

The questions that have arisen in Wisconsin are:

- 1) When a railroad wishes to reactivate a banked line that has been altered, whether by the trail user or a third party, such as a governmental body or community, who is financially responsible for restoring the line to operating conditions?

For example, where bridges over a trail have been reconstructed to a height too low to allow rail cars to pass, who must pay to have the bridges altered or removed to allow the corridor to accommodate rail traffic?

In Wisconsin, WisDOT requires an agreement from the party who alters the property that they will finance restoration to operating condition. WisDOT supports this process because it encourages operators to reactivate lines, thus facilitating transportation options to Wisconsin shippers.

- 2) Where the abandoning railroad no longer exists as the entity that abandoned the line (railroad was sold or otherwise no longer operating), where does the operating authority reside, or must a railroad that wishes to re-activate the line apply for new authority to operate on the line, requiring the full process (environmental, etc.)?
- 3) Where the trail sponsor has purchased the right of way from the abandoning railroad, what rights does the trail sponsor have when a railroad seeks to reactivate the line?

For example, in the case of the West Allis Line, AB-57 (Sub-No. 55X), the trail sponsor, WisDNR paid approximately \$5 million to acquire the right of way from milepost 88.2 to milepost 93.2 from the abandoning Soo Line. If a railroad wished to reactivate this banked segment, who would determine whether and in what amount DNR should be compensated? Would WisDNR have any input or refusal authority into the reactivation process? Would the answers be different if the trail user were a private party instead of a governmental entity?

These questions and related inquiries represent an increasing interest in rail traffic, both freight and passenger rail. WisDOT expects this interest to continue to grow, and that currently banked lines will be reactivated in Wisconsin. The answers to these questions will inform transportation planning, and operations in the state.

Respectfully Submitted,

*Kathleen Chung*

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Dated: July 1, 2009

STB Ex Parte 690

July 1, 2009

Wisconsin Department of Transportation Comments – Exhibit A

Name of Line	STB Docket No	Abandoning Railroad	Trail User
Rice Lake – Superior	AB 303 (Sub-No. 11X)	Wisconsin Central, Ltd. (WCL)	Wisconsin Department of Natural Resources (DNR)
Amery – Almena	AB 303 (Sub-No. )	WCL	DNR
Amery – Dresser	AB 303 (Sub-No. 18X)	WCL	Polk County
Lone Rock – Richland Center	ICC Docket No. 3140	WICT	Richland County
Monroe – Mineral Point	ICC Docket No. 3074	WICT (Wisconsin and Calumet)	Pecantonica rail Transit Commission
West Bend – Eden	AB 402 (Sub-No. 7X)	Fox Valley Western (FVW)	DNR
Green Bay – New London	AB 402 (Sub-No. 8X)	FVW	DNR
Crandon – White Lake	AB 303 (Sub-No. 23X)	WCL	DNR
Crandon, 4.62 miles	AB 303 (Sub-No. 29X)	WCL	DNR
Oconto – Stiles Jct.	AB 33 (Sub-No. 104X)	UP	DNR
Luxemburg – Kewaunee	AB 402 (Sub-No. 5X)	FVW	DNR
Manawa – Scandinavia	AB 402 (Sub-No. 6X)	FVW	DNR
Casco – Algoma	AB 402 (Sub-No. 2X)	FVW	DNR
Green Bay – Greenleaf	AB 303 (Sub-No. 13X)	WCL	DNR
Greenleaf – Hilbert	AB 303 (Sub-No. 22X)	WCL	DNR
Burlington – Kansasville	AB 57 (Sub-No. 53X)	Soo	DNR
Ft. Atkinson	AB 33 (Sub-No. 111X)	UP	City of Jefferson
City of Waukesha	AB 33 (Sub-No. 115X)	UP	City of Waukesha
Madison, Central Soya	AB 33 (Sub-No. 251X)	UP	Cities of Madison and Fitchburg
West Allis Line	AB 57 (Sub-No. 55X)	Soo	DNR
Trego-Hayward Jct.	AB 33(Sub-No. 114X)	UP	Washburn County Transit Commission
Menomonie Industrial Lead	AB 33 (Sub-No. 190X)	UP	City of Menomonie
White Lake – Shawano	AB 303 (Sub-No. 25X)	WL	DNR (fr. Menomonee Co. line north)
Duck Creek – Kelly	AB1 (Sub-No. 238)	CNW	DNR
Plover – Scandanavia	AB 402 (Sub-No. 3X)	FVW	DNR
Prentice – Medford	AB 303 (Sub-No. 1X)	WCL	Taylor and Price Counties
Ashland – Superior	AB 6 (Sub-No. 259)	BN	Tri-County Recreational Corridor Commission