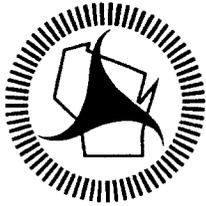


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Wisconsin Department of Transportation

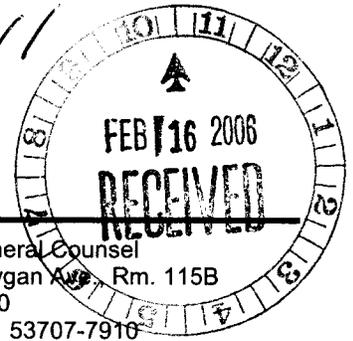
www.dot.wisconsin.gov

Jim Doyle
Governor

Frank J. Busalacchi
Secretary

Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P O Box 7910
Madison, WI 53707-7910

Telephone: 608-266-8810
FAX: 608-267-6734
E-mail: ogc.exec@dot.state.wi.us



February 15, 2006
Overnight Delivery

Mr. Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board, Room 1324
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

FEB 16 2006

Part of
Public Record

RE: **Finance Docket No. 34764** Wisconsin Department of Transportation –
Purchase of Real Estate and Improvements from Wisconsin & Southern
Railroad Co. – In Dane and Jefferson Counties, WI

Dear Mr. Williams:

Enclosed for filing are the original and ten copies of the Department's
Petition for Declaratory Order of the Wisconsin Department of Transportation
Response to the Board Decision Served February 6, 2006.

Please date stamp and return the duplicate copy of this transmittal letter in
the prepaid, return mail envelope for verification of receipt. Thank you.

Sincerely,

James S. Thiel
Attorney

Enclosures

pc: Ron Adams
John D. Heffner

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34764

WISCONSIN DEPARTMENT OF TRANSPORTATION
PURCHASE OF REAL ESTATE AND IMPROVEMENTS
FROM
WISCONSIN & SOUTHERN RAILROAD CO.
IN DANE AND JEFFERSON COUNTIES, WI



PETITION FOR DECLARATORY ORDER
OF THE
WISCONSIN DEPARTMENT OF TRANSPORTATION
RESPONSE TO THE BOARD DECISION
SERVED ON FEBRUARY 6, 2006

ENTERED
Office of Proceedings

FEB 16 2006

Part of
Public Record

INTRODUCTION

The Wisconsin Department of Transportation (WisDOT) is a governmental entity. 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.

In 1998, Wisconsin & Southern Railroad Co. (WSOR) was granted authority to lease and operate approximately 32.5 miles of rail line then owned by Soo Line Railroad Company d/b/a/ Canadian Pacific Railway (CPR). See Wisconsin & Southern Railroad Co. - Lease and Operation Exemption – Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33571 (STB served May 27, 1998). In 2003, WSOR filed a notice of exemption and acquisition exemption to acquire from the Soo Line Railroad Company d/b/a Canadian Pacific Railway approximately 32.5 miles of rail line known as the Waterloo Spur, extending between milepost 132.11 at Watertown, WI,

and milepost 164.61 in Madison, WI. See Wisconsin & Southern Railroad Co. - Acquisition Exemption – Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 34285 (STB served January 17, 2003).

On November 7, 2003, WSOR granted WisDOT an option to purchase this rail line and improvements but not the common carrier authority to provide freight rail service. This option will not be exercised without a ruling from the Board that it does not have jurisdiction over the proposed acquisition.

WisDOT submitted to the Surface Transportation Board (“STB”) a Petition for Declaratory Order (the “Petition”) requesting an order or other appropriate written notification stating that the STB does not have jurisdiction over the transaction set forth in the Transaction Agreement Documents, as defined in this Petition. In support of its Petition, WisDOT submitted (1) a deed from the WSOR to WisDOT, dated August 10, 2005 (the “Deed”), (2) an easement from WisDOT to WSOR (the “Easement”) (the Deed and Easement collectively attached thereto as Exhibit 1), (3) a grant agreement between WisDOT and the Wisconsin River Rail Transit Commission (“WRRTC”¹) including Amendment Nine to Grant Agreement (the “Grant Agreement”) attached thereto as

¹ WRRTC is a municipal entity and consortium of interested Wisconsin counties, created under the provisions of Wisconsin Statutes Section 66.30 (renumbered 66.0301), which was established, in part, to oversee the preservation of rail service on certain rail lines acquired by the State of Wisconsin. WRRTC was created to undertake rail preservation activities for the State, because the State of Wisconsin was, prior to an April 1992 amendment, constitutionally prohibited from the acquisition, improvement or construction of railways or other railway facilities (or to be a party to any such works) and from borrowing money to invest in rail line improvements and rehabilitation. See Article VIII, Section 10, Wisconsin Constitution.

Exhibit 2), and (4) an operating agreement between WSOR and the WRRTC with Amendment Two to Operating Agreement (the "Operating Agreement," attached as Exhibit 3) (the Deed, Easement, Grant Agreement and Operating Agreement collectively as the "Transaction Agreement Documents").

In the Board Decision served on February 6, 2006, the Board directed WisDOT to submit a revised Section 2.2(k) of the operating agreement by February 16, 2005.

RESPONSE TO THE BOARD'S CONDITION

The Board conditionally granted the request of WisDOT Petition for Declaratory Ruling that the Board does not have jurisdiction over the subject transaction subject to WisDOT submitting a revised Section 2.2(k) of the Operating Agreement. The Board requested that WisDOT clarify the language of Section 2.2(k) of the Operating Agreement to explicitly state that WisDOT intends that this section "merely to require WSOR to receive a written permit from WisDOT before WSOR itself could provide passenger service." In addition, the Board conditioned its grant of WisDOT's request upon "WisDOT revising this section in such a way that it is clear that the permitting requirement would not interfere with WSOR's ability to provide freight service."

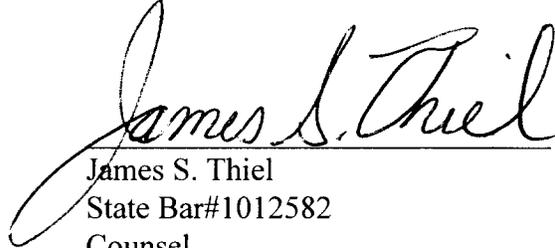
WisDOT has met with the Commission and had the Commission amend section 2.2(k) of the operating agreement to clearly comply with the directives of the Board. The revised language is attached.

CONCLUSION

WisDOT, by following the mandates of Maine DOT and BMWE, and the recent directives of the Board, hereby seeks to avoid the imposition of common carrier liability

in this case and respectfully requests the STB to issue a Declaratory Order or other appropriate written notification, stating that STB does not have jurisdiction over the subject transaction.

Respectfully submitted,

A handwritten signature in cursive script that reads "James S. Thiel". The signature is written in black ink and is positioned above the typed name and contact information.

James S. Thiel
State Bar#1012582
Counsel
Wisconsin Department of Transportation
Office of General Counsel
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, Wisconsin 53707-7910
(608) 266-8810

0490-40-48(d)(3)

Amendment Three
To
Operating Agreement
Agreement No. 0490-40-48(d)

This Amendment Three to Agreement No. 0490-40-48(d) dated September 1, 1997, is made and entered into this 14th day of February, 2006, by and between the Wisconsin River Transit Commission, d/b/a Wisconsin River Rail Transit Commission, a municipal corporation established in accordance with Sec. 66.30 Wis. Stats., (now Section 66.0301 Wis. Stats.) ("Commission") and Wisconsin & Southern Railroad Company ("WSOR"), a railroad company organized and existing under the laws of the State of Wisconsin and fully empowered to act as a railroad company in Wisconsin.

WITNESSETH

WHEREAS, Section 12.6 of Agreement allows for amendment, and

WHEREAS, under an Option to Purchase Agreement dated November 7, 2003 by and between WSOR and WisDOT, WisDOT acquired an option to acquire the Madison to Watertown, Wisconsin line at a later date, and

WHEREAS, as part of that agreement, WisDOT required WSOR to enter into an Operating Agreement requiring WSOR to operate said line in like manner to other lines operated under agreement between the Commission and WSOR, and

WHEREAS by an Amendment dated December 6, 2002 to Agreement No. 0490-40-48(d) dated September 1, 1997 Commission and WSOR added the Madison to Watertown line segment to said agreement, and

WHEREAS, WisDOT now plans to exercise the option to acquire said rail line and will take title to the property, and

WHEREAS, by amendment dated September 9, 2005 WisDOT and Commission have agreed to amend Grant Agreement No. 0490-40-48(b) by and between the WisDOT and Commission to include the Madison to Watertown rail line, as one of the line segments covered under that agreement, and

WHEREAS, by petition filed with the Surface Transportation Board (Board) on November 4, 2005 WisDOT requested a declaratory order stating that the Board does not have jurisdiction over its planned purchase of the Madison to Watertown line, and

WHEREAS, by order dated December 2, 2005 the Board requested additional information or possible changes to the Operating Agreement between the WSOR and Commission before it could make such a determination, and

WHEREAS, by decision issued February 2, 2006 the Board has requested additional modifications to Section 2.2(k) of the Operating Agreement, and

WHEREAS, by action taken at its December 9, 2005 meeting, the Executive Committee of Commission authorized its officers to execute amendments to the Operating Agreement necessary to address the Boards concerns.

NOW THEREFORE, the parties hereto agree as follows:

1. Section 2.2(k) shall be amended to read as follows:

(k)The purpose of this section is to merely require Wisconsin & Southern Railroad Company to receive a written permit from WisDOT before Wisconsin & Southern Railroad Company itself provides passenger rail service. This section does not limit Wisconsin & Southern Railroad Company's ability to provide freight services.

If Operator proposes to operate or allow the operation of any train over any portion of the Rail Line which is to carry any person paying a fee for carriage, Operator shall first apply for and receive a written permit from WisDOT for the passenger operations on the Rail Line. WisDOT in consultation with Commission may grant or deny a permit based solely upon any of the following: adequacy of liability insurance coverage, terms and amount as set forth in Section 6.2 below; trackage condition; proposed speed of operation; preparations for crowd control, parking and clean-up; and sufficiency of consumer protection assurances associated with each use by Operator of any portion of the Rail Line subject to this Agreement to be operated over by Operator or by an affiliate, subcontractor or lessee of Operator. The permit may be denied if not requested in writing a minimum of ten days prior to the proposed use date, or if a fully executed copy of an acceptable certificate of binding insurance is not submitted for Commission and WisDOT review ten days prior to the proposed use date, if insurance coverage is inadequate or flawed in the reasonable judgment of Commission or WisDOT, or if a prior fee remains unpaid in whole or in part.

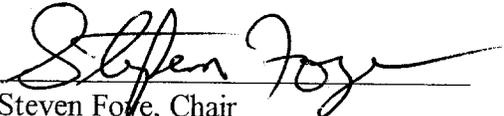
2. This Amendment will take effect following a determination by the Surface Transportation Board that WisDOT will not assume the responsibilities of a common carrier railroad operator by acquiring this property, and following the execution and recording of all necessary documents transferring ownership and title to the Madison to Watertown rail line property to WisDOT.

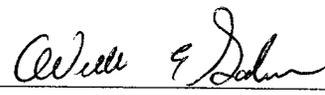
All other sections of Agreement No. 0490-40-48(d) shall remain as written.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to be executed by their duly authorized officers on the date and year written above.

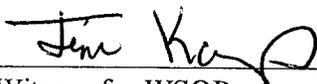
Wisconsin River Rail Transit Commission

Wisconsin & Southern Railroad Company


Steven Foye, Chair


William Gardner, President


William Agnew, Secretary


Witness for WSOR

1707