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SERVICE DATE – MARCH 19, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-303 (Sub-No. 20X)

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

Decided: March 18, 2009

On November 17, 1999, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the State of Wisconsin Department of Natural Resources (WisDNR) to negotiate an interim trail use/rail banking agreement with Wisconsin Central Ltd. (WCL) for a 1.63-mile line of railroad between milepost 198.37 and milepost 200 in Green Bay, Brown County, WI. The negotiating period under the NITU was extended several times for the portion of the right-of-way from milepost 198.37 to milepost 199.84. The latest extension decision, served on August 28, 2008, extended the negotiation period until February 28, 2009.

On February 24, 2009, WisDNR filed a motion for an extension of the NITU negotiating period with respect to the portion of the line between mileposts 198.37 and 199.84 for an additional 180 days. WISDNR states that negotiations are currently continuing in good faith, but that more time is needed to finalize negotiations. On February 25, 2009, WCL filed its response stating that it is agreeable to the requested extension of the negotiation period under the NITU.

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 by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, extension of the NITU 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). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended for an additional 180 days from February 28, 2009 (until August 27, 2009), for the portion of the right-of-way between milepost 198.37 and milepost 199.84. Given the time that has elapsed since abandonment was authorized, the parties are again urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. WisDNR's request to extend the NITU negotiation period is granted.
2. The negotiation period under the NITU is extended to August 27, 2009, for the portion of the right-of-way between milepost 198.37 to milepost 199.84.
3. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary