

SERVICE DATE – APRIL 24, 2023

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. FD 31340

WISCONSIN AND CALUMET RAILROAD COMPANY, INC.—
MODIFIED RAIL CERTIFICATE

Decided: April 24, 2023

In a decision served on October 28, 1988, the Board's predecessor, the Interstate Commerce Commission (ICC), issued a modified certificate of public convenience and necessity (modified certificate) under 49 C.F.R. § 1150.23 to the Wisconsin and Calumet Railroad Company, Inc. (WICT), to operate a rail line owned by the State of Wisconsin¹ between milepost 0.07 at Mazomanie, Wis., and milepost 13.07 at Prairie du Sac, Wis., a distance of approximately 13 miles. The current operator, the Wisconsin and Southern Railroad, L.L.C. (WSOR), is a successor to WICT.²

On March 10, 2023, WSOR filed, under 49 C.F.R. § 1150.24, a 60-day notice of its intent to terminate service under the modified certificate on an approximately 3.24-mile segment, from milepost 7.96 in the Village of Sauk City, in Sauk County, Wis., to milepost 4.72, near the Town of Mazomanie, in Dane County, Wis. (the Line). According to WSOR, no traffic has moved over the Line for more than six months.

Also on March 10, 2023, WisDOT filed a petition on behalf of the Wisconsin Department of Natural Resources (WDNR) for a notice of interim trail use or abandonment (NITU) for the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. WDNR has submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way as required pursuant to 49 C.F.R. § 1152.29, and has acknowledged that the use of the right of way for trail purposes is subject to future reconstruction and reactivation for rail service. WisDOT, WDNR, and WSOR have agreed to work cooperatively for WDNR's use of the right of way. (WisDOT Notice 2.)

¹ The State of Wisconsin, through its Department of Transportation (WisDOT), acquired the line after the previous owner, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, became bankrupt and discontinued service and the line was authorized for abandonment. See Chi., Milwaukee, St. Paul & Pac. R.R.—Aban.—Middleton to Richland Ctr., Wis., AB 7 (Sub-No. 99) (ICC served May 6, 1982).

² In 1992, WICT was purchased by the Wisconsin & Southern Railroad Co., which is succeeded by WSOR.

The purchase of the Line by Wisconsin was made pursuant to Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions (Common Carrier Status of States), 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Under that precedent, where a state entity acquires a rail line approved for abandonment and the abandonment has not been consummated, the acquisition is exempt from Board regulation, as is the state entity after the acquisition has taken place. See City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137, slip op. at 2 (STB served May 31, 2018). The Board has found that lines of railroad acquired under Common Carrier Status of States can be subject to trail use under the Board's procedures as long as the owner of the line is willing to enter into negotiations for trail use on a that line. Id., slip op. at 6. Wisconsin, acting through WisDOT, has clearly indicated with its pleadings that it is willing to negotiate for trails use on the Line.

Inasmuch as abandonment has never been consummated, and because the WisDOT/WDNR request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued for the Line. The parties are free to negotiate an agreement during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within ten days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). Because WSOR has already filed its termination notice under 49 C.F.R. § 1150.24, if no interim trail use agreement is reached, the modified certificate shall be considered terminated as of the end of the NITU negotiating period. Use of the right-of-way for trail purposes is subject to future restoration for railroad purposes. See 49 C.F.R. § 1152.29(d)(2).

It is ordered:

1. The request for a notice of interim trail use under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is accepted. WisDOT may negotiate with WDNR for interim trail use for the Line for a period of 180 days from the service date of this decision and notice, until October 21, 2023.
2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
3. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the trail sponsor's continuing to meet the financial obligations for the right-of-way described in paragraph 2 above.
4. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
5. If an interim trail use agreement is reached by October 21, 2023 (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an

agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no interim trail use agreement is reached, the modified certificate shall be considered terminated as of the end of the NITU negotiating period.

6. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.