

SERVICE DATE – MARCH 12, 2024

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: March 12, 2024

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. In 1992, WICT was purchased by the Wisconsin & Southern Railroad Co., which was succeeded by Wisconsin and Southern Railroad, L.L.C. (WSOR).

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). 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.

By decision and NITU served on April 24, 2023, the Board issued a NITU for the Line and authorized a 180-day period for WDNR, as proposed trail sponsor, to negotiate with WisDOT for interim trail use/rail banking of the Line's right-of-way under the Trails Act. A decision served on October 2, 2023 extended the NITU negotiating period until October 21, 2024.

On January 25, 2024, WDNR and Dane County jointly requested that the Board substitute Dane County for WDNR as the proposed trail sponsor. The request includes a copy of the extant NITU and a statement of Dane County's willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of

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).

any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 C.F.R. § 1152.29. Dane County acknowledges that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The request complies with the requirements of 49 C.F.R. § 1152.29(f). Accordingly, the proceeding will be reopened and a replacement NITU will be issued.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on April 24, 2023 is vacated.
3. A replacement NITU is issued to Dane County as the new interim trail sponsor for the Line's right-of-way effective on the service date of this decision and notice, until October 21, 2024.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor 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 sponsor 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.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.
6. If an interim trail use/rail banking agreement is reached (and thus, interim trail use/rail banking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2), (h).
7. If interim trail use/rail banking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/rail banking agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
8. If an agreement for interim trail use/rail banking is reached by October 21, 2024, interim trail use/rail banking may be implemented.

9. This decision and notice is effective on its service date.

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