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SERVICE DATE - MARCH 14, 2025

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 14, 2025

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. By decision served March 12, 2024, the Board vacated the NITU and issued a replacement NITU, substituting Dane County for WDNR as the proposed trail sponsor.

On January 16, 2025, WisDOT, on behalf of Dane County and in conjunction with WSOR, requests an extension of the NITU negotiating period to October 21, 2025. The request

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).

to extend the negotiating period will be granted, notwithstanding that WisDOT filed its request after the NITU negotiating period expired.

In a typical abandonment proceeding, if no interim trail use/rail banking agreement is reached during the NITU negotiating period, the rail carrier would then have 60 days after the expiration of the NITU, absent a Board-granted extension, to file its notice of consummation, assuming no other legal or regulatory barrier to consummation exists; otherwise, the authority to abandon the subject line would automatically expire. See 49 C.F.R. § 1152.29(e)(2).

Here, however, the purchase of the Line was made pursuant to Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions, 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). In such cases, the state-entity line owner need not file a notice of consummation with the Board to withdraw the line from the national rail system, see Beaufort Railroad—Modified Rail Certificate, FD 34943, slip op. at 6 (STB served Mar. 19, 2008), so the 60-day regulatory period for doing so does not apply. Here, furthermore, no one has suggested that WisDOT has taken steps indicating an intent to abandon the Line; indeed, WisDOT's request to extend the NITU negotiating period demonstrates, to the contrary, its intent to continue to preserve the right-of-way for potential future rail service consistent with the Trails Act. See Beaufort R.R.—Modified Rail Cert., FD 34943, slip op. at 8 (STB served May 20, 2009). Therefore, the Line remains within the Board's jurisdiction, and the NITU negotiating period may be extended. Accordingly, WisDOT's request to extend the NITU negotiating period to October 21, 2025, will be granted.

It is ordered:

1. The interim trail use negotiating period is extended until October 21, 2025.
2. If an interim trail use agreement is reached by October 21, 2025 (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).
3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.