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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
March 2, 2017
Part of
Public Record

Finance Docket No. 31340

WISCONSIN & SOUTHERN RAILROAD, L.L.C
-- MODIFIED CERTIFICATE --
MAZOMANIE, WISCONSIN TO PRAIRIE DU SAC, WISCONSIN

**WISCONSIN DEPARTMENT OF NATURAL RESOURCES (WDNR)
PETITION FOR NOTICE OF INTERIM TRAIL USE**

BACKGROUND

The State of Wisconsin, through its Department of Transportation (WisDOT), petitions to obtain a notice of interim trail use for interim highway, bicycle, pedestrian, and other trail purposes and railbanking pursuant to 16 U.S.C. §1247(d) and 49 C.F.R. § 1152.29 for the Wisconsin Department of Natural Resources (WDNR) for a segment of rail line extending approximately 5.11 miles, beginning near milepost 7.96, near Sauk City, in Sauk County, Wisconsin, to milepost 13.07, near Prairie du Sac, in Sauk County, Wisconsin, through Zip Codes 53578 and 53583 in Sauk County ("the instant rail line").

On service date October 28, 1988, in this same docket, the Interstate Commerce Commission (ICC) issued a modified certificate of public convenience and necessity under 49 C.F.R. § 1150.23 to the Wisconsin and Calumet Railroad Company, Inc. (WICT), to operate a rail line, of which the instant rail line is a segment, between Mazomanie, Wisconsin (milepost 0.07) and Prairie du Sac, Wisconsin (milepost 13.07), a distance of approximately 13 miles. This longer rail line, including the instant rail line, was acquired by WisDOT from the previous operator, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW), after it

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became bankrupt and discontinued service, and I.C.C. authorized its abandonment.¹

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

Concurrently with this petition, and pursuant to 49 C.F.R. § 1150.24, WSOR is providing notice to the Surface Transportation Board (the Board) and the State of Wisconsin, through WisDOT, of its intent to terminate service under the modified certificate of public convenience and necessity on the instant rail line. No shippers have used the instant line for more than six months.

On February 10, 2017, WDNR signed a Statement of Willingness to Accept Financial Responsibility pursuant to 49 C.F.R. § 1152.29 for the instant rail line, owned by WisDOT, extending approximately 5.11 miles, beginning near milepost 7.96, near Sauk City, in Sauk County, Wisconsin, to milepost 13.07, near Prairie du Sac, in Sauk County, Wisconsin, through Zip Codes 53578 and 53583 in Sauk County.

PURPOSE

WisDOT petitions to obtain a notice of interim trail use for interim highway, bicycle, pedestrian and other trail purposes and railbanking pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 for WDNR for the instant rail line. WDNR will use or preserve the land corridor and related real property for interim public transportation and recreational purposes (including highway, pedestrian and other trail), subject to restoration for railroad purposes. WisDOT, WDNR, and WSOR have agreed to work cooperatively for WDNR to use the right of way.

STATE AND COUNTY RESPONSIBILITIES

WisDOT is the designated rail transportation authority in the state of Wisconsin.²

¹ Chicago, M. St. P., & Pac. R. Co. – Aband. – Middleton, Richland Center, WI, Docket No. AB-7(Sub-No. 99)

WisDOT is responsible for all state and federally-aided highway and airport construction in Wisconsin and is responsible for planning, promoting, and protecting all forms of transportation in the state.³ WisDOT has statutory first right to acquire for present or future transportation and recreational purposes any property used in operating a railroad that is abandoned in Wisconsin, and the authority to administer grants and loans for rail projects to assist in the preservation and improvement of freight rail service in the state.⁴

WisDOT has state statutory authority to incorporate trails into the highway right-of-way in Wis. Stat. § 84.06(11):

"(11) State Trails. As a part of any highway improvement or as a separate project under this section, a portion of a hiking trail, cross-country ski trail, bridle trail or bicycle trail under the management of a state agency, municipality or nonprofit may be incorporated into the highway right-of-way, and facilities for safe crossing of the highway may be provided."

WDNR and WisDOT need the interim trail use designation to fulfill federal and state transportation and environmental responsibilities.

NOTICE OF INTERIM TRAIL USE

WisDOT respectfully requests that the Board provide WDNR a notice of interim bicycle, pedestrian and other trail use and rail banking condition to accomplish the above public purposes. WisDOT is interested in having WDNR use the right-of-way of the rail line being abandoned for interim bicycle, pedestrian or other trail use and rail banking.

Exhibit 1 consists of a map showing the location of all the needed property in Sauk County in Wisconsin.

(I.C.C. served May 6, 2982)

² 49 U.S.C. 22701(4); Wis. Stat. Chp. 85.

³ Secs. 84.01(2), 114.32(1) and (5), and 85.02(1), Wis. Stats.; Wisconsin Department of Transportation, Wisconsin Rail Plan 2030: Statewide Long-Range Rail Transportation Plan, March 19, 2014, *available at* <http://wisconsindot.gov/Pages/projects/multimodal/railplan/default.aspx>.

⁴ Secs. 85.09(2), 85.08(4m) Wis. Stats.

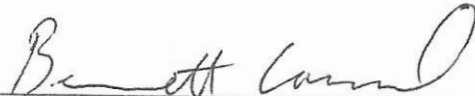
Exhibit 2 is the required Statement of Willingness by WDNR to assume full responsibility for management of the property.

WDNR's use of the corridor for present and future transportation purposes is consistent with all Congressional purposes and neither abandonment nor discontinuance permitted by the Board, conditioned as requested by WDNR would be inconsistent with or disruptive of potential future rail use.

CONCLUSION

WisDOT respectfully requests the Board to issue a Notice of Interim Trail Use to WDNR for the land corridor and related real property for the instant rail line owned by WisDOT extending approximately 5.11 miles, beginning near milepost 7.96, near Sauk City, in Sauk County, Wisconsin, to milepost 13.07, near Prairie du Sac, in Sauk County, Wisconsin, through Zip Codes 53578 and 53583 in Sauk County. This will allow all forms of transportation to be provided in a unified, interconnected, economically-efficient, and environmentally sound manner.

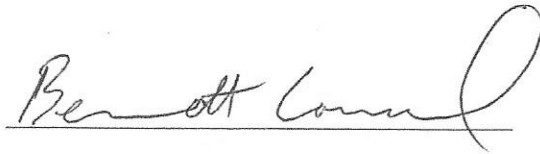
Respectfully submitted,


Bennett Conard, State Bar No. 1100005
Attorney for Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115-B
P. O. Box 7910
Madison, WI 53707-7910
(608) 266-8810

March 1, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing petition for Notice of Interim Trail Use in regards to **Finance Docket No. 31340**, by electronic mail or regular mail, pursuant to 49 C.F.R. §1104.12, this 1st day of March, 2017, on all parties of record on the service list.

A handwritten signature in cursive script, reading "Bennett Conard", written over a horizontal line.

Bennett Conard, Attorney
State Bar no. 1100005
Wisconsin Department of Transportation
Office of General Counsel

EXHIBIT 1

Sauk County



Subject Area

Milepost 13.07



Further described as the point S89 degrees 51'22"W 87.44 feet along the South line of the Northwest 1/4 of Section 23, Township 10 North, Range 6 East from center of Said Section 23.

Milepost 7.96



Further described as 89.72755 W lat., 43.26541 N long., or the eastern extent of Water Street.

WISCONSIN DEPARTMENT
OF NATURAL RESOURCES



EXHIBIT

Abbe's

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD31340

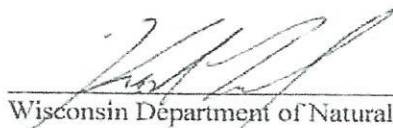
WISCONSIN & SOUTHERN RAILROAD LLC
-- ABANDONMENT EXEMPTION --
SAUK AND DANE COUNTIES, WISCONSIN

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY BY
STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
PURSUANT TO 49 CFR 1152.29

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR § 1152.29, with respect to the right-of-way owned by the Wisconsin Department of Transportation (WisDOT) and operated by the Wisconsin & Southern Railroad LLC (WSOR), the State of Wisconsin Department of Natural Resources (WDNR) is willing to assume full responsibility for: (1) Managing the right-of-way, (2) 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 (3) the payment of any and all taxes that may be levied or assessed against the right-of-way. The property, known as the Sauk Subdivision, extends from railroad milepost 7.96 in the Village of Sauk City, Sauk County, to railroad milepost 13.07 near Prairie du Sac, Sauk County, a distance of approximately 5.11 miles in Sauk County, Wisconsin. The right-of-way is part of a line of railroad proposed for abandonment in Finance Docket No. 31340.

A map depicting the property depicting the right-of-way is attached as **Exhibit 1**.

WDNR acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad, WSOR, on the same date it is being served on the Board.



Wisconsin Department of Natural Resources

2/10/17
Date

By: Kurt Thiede
Office of the Secretary
101 S Webster Street, Madison, WI 53703

WDNR contact:
Brigit Brown
State Trails Coordinator, PR/6
101 S Webster Street, Madison, WI 53703
608-266-2183, brigit.brown@wisconsin.gov



EXHIBIT 1

Sauk County



Subject Area

Milepost 13.07

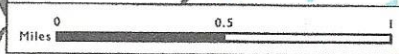


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Milepost 7.96



Further described as 89.72755 W lat., 43.26541 N long., or the eastern extent of Water Street.



WISCONSIN DEPARTMENT
OF NATURAL RESOURCES



Bureau of
Parks and Recreation
Feb 24, 2017

Great Sauk State Trail - dcb