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SERVICE DATE – MARCH 13, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34764

WISCONSIN DEPARTMENT OF TRANSPORTATION—
PETITION FOR DECLARATORY ORDER

Decided: March 10, 2006

By petition filed on November 4, 2005, the Wisconsin Department of Transportation (WisDOT) requests a declaratory order stating that the Board does not have jurisdiction over its planned purchase of the Waterloo Spur, which runs 32.5 miles between milepost 132.11 at Watertown, WI, and milepost 164.61 in Madison, WI. WisDOT seeks to buy the Spur from Wisconsin & Southern Railroad Company (WSOR).

Because we were concerned with several provisions of the draft operating agreement between WSOR and Wisconsin River Rail Transit Commission (WRRTC),¹ on December 2, 2005, we directed WisDOT either to explain why the provisions would not conflict with our precedent in Maine, DOT—Acq. Exemption, ME Central R. Co., 8 I.C.C.2d 835 (1991) (State of Maine), or to revise the draft operating agreement. WisDOT responded on December 22, 2005. In a decision served on February 6, 2006, we found that, with one exception, WisDOT's amendments to the draft operating agreement had satisfactorily resolved our concerns. In that decision, we conditionally granted WisDOT's request for a declaratory order and directed WisDOT to revise Section 2.2(k) of the draft operating agreement. On February 16, 2006, WisDOT submitted a revised Section 2.2(k) addressing the Board's concerns.

WisDOT plans to purchase the Spur, including real estate, tracks, and other improvements, but not to assume the common carrier obligation to provide freight rail service. In our February 6 decision we found that, provided WisDOT revised Section 2.2(k) of the operating agreement, this transaction would be consistent with State of Maine and its progeny, in which the state entity acquired title to the property, but another entity retained an easement to provide rail service and the concomitant common carrier obligation.

Our concern with Section 2.2(k) of the operating agreement was that, as written, it appeared to limit, or potentially eliminate, WSOR's ability to provide freight service. In

¹ WRRTC is a municipal entity and consortium of interested Wisconsin counties dedicated to preserving freight rail service on certain rail lines acquired by the State of Wisconsin.

response, WisDOT states that it has revised this section to make clear that it merely requires WSOR to receive a written permit from WisDOT before WSOR provides passenger rail service. The new language does not limit WSOR's ability to provide freight service.

This amendment resolves the Board's concerns with this provision as previously drafted. Therefore, we find that WisDOT has satisfied the condition imposed in our February 6 decision, and the declaratory order, finding that no Board authorization for WisDOT's planned purchase of the Waterloo Spur is required, will now be made effective.

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

It is ordered:

1. WisDOT's amendment to Section 2.2(k) of the operating agreement is approved and the condition contained in our February 6 decision is removed.
2. WisDOT's petition for declaratory order is granted.
3. This decision will be effective on its service date.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary