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SERVICE DATE - SEPTEMBER 5, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-402 (Sub-No. 8X)

FOX VALLEY & WESTERN LTD.--ABANDONMENT
EXEMPTION--IN BROWN AND OUTAGAMIE COUNTIES, WI

Decided: August 30, 2001

By decision and notice of interim trail use or abandonment (NITU) served March 2, 2001, Fox Valley & Western LTD. (FVW) was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad extending from milepost 4.78 west of Green Bay to milepost 38.98 in New London, in Brown and Outagamie Counties, WI.¹ The NITU authorized FVW to negotiate an interim trail use rail/banking agreement with the Wisconsin Department of Transportation, on behalf of the Wisconsin Department of Natural Resources (WisDNR), pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The negotiating period under the NITU was scheduled to expire on August 29, 2001.

On August 28, 2001, FVW and WisDNR jointly filed a petition for an extension of the negotiating period for an additional 180 days. The parties state that an initial timely offer has been made, but that more time is needed to finalize negotiations.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances,

¹ The exemption was made subject to employee protective, historic, environmental, and other conditions. By decision served August 15, 2001, the historic condition was modified to require that FVW retain its interest in and take no steps to alter the integrity of the rail line located within the boundaries of the Oneida Indian Reservation until completion of the section 106 process of the National Historic Preservation Act, which will determine the effect on cultural and historic resources.

² See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and SSW Ry. Co.--Aban.--In Smith and Cherokee Counties, TX, I.C.C.2d 406 (1992).

further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996); cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiation period will be extended to February 25, 2002.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The negotiating period under the NITU is extended to February 25, 2002.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary