

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 303 (Sub-No. 26X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—
IN ASHLAND COUNTY, WIS.

Decided: December 28, 2010

On July 1, 2004, a decision and notice of interim trail use or abandonment (NITU) was served in this proceeding authorizing a 180-day period for the City of Ashland, Wis. (the City), to negotiate an interim trail use/rail banking agreement with Wisconsin Central Ltd. (WCL) for a 0.48-mile line of railroad from milepost 435.35 on Ashland's lakefront and traveling 2,552 feet to a point where it connects to a private spur that used to serve the C. Reiss Coal Company in Ashland, Ashland County, Wis.¹ The negotiating period under the NITU was extended several times, with the latest extension expiring on November 29, 2010.

By motion filed on November 19, 2010, the City seeks an extension of the negotiating period for an additional 180 days. The City states that the parties have secured a memorandum of understanding and have drafted and executed a purchase sale option, and that a deed for the western portion of the right-of-way, from Ellis Avenue west to Vaughn Avenue, has been recorded. According to the City, it and WCL are continuing good faith negotiations, but the negotiations are still affected by the Superfund clean up costs and findings by the Environmental Protection Agency (EPA). More specifically, the City notes that EPA issued a Record of Decision on the clean up of the Superfund site on September 30, 2010, which began the process of identifying responsible parties for the clean up. The City also notes EPA's belief that "special notice letters" will be issued within 120 days from issuance of the Record of Decision, which will allow the responsible parties to negotiate a settlement. In a response filed on December 7, 2010, WCL agrees to the City's extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended for an

¹ Six environmental conditions were also imposed in that decision.

² See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

additional 180 days, until May 28, 2011. Given the time that has elapsed since abandonment was granted, the negotiating parties are again urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended until May 28, 2011.
3. This decision is effective on the date of service.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.