

ENTERED  
Office of Proceedings  
December 18, 2013  
Part of the Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

AB-303 (SUB-No. 40X)

WISCONSIN CENTRAL LTD.  
- ABANDONMENT EXEMPTION -  
IN OUTAGAMIE COUNTY, WISCONSIN

CITY OF KAUKAUNA, WISCONSIN (CKW)  
PETITION FOR NOTICE OF INTERIM TRAIL USE

DECISION ID NO: 73568	DECIDED DATE: 12/23/13	SERVICE DATE: 12/24/13	APPROVED: <i>Richard Campbell</i> Director
			<input checked="" type="checkbox"/> Office of Proceedings GRANTED

*extended to 4/14/14.*

**BACKGROUND**

Wisconsin Central Ltd., (“WCL”) filed with the Surface Transportation Board (Board) a Verified Notice of Exemption under 49 C.F.R. § 1152 Subpart F – Exempt Abandonments to abandon a portion of its railroad line known as the Fox River Sub, from milepost 112.9 to milepost 114.0, a distance of 1.10 miles, all within the City of Kaukauna, Outagamie County, Wisconsin. This line traverses United States Postal Service Zip Code 54130.

On March 19, 2013, the Common Council of the City of Kaukauna voted to approve, and the Mayor of the City of Kaukauna signed a Statement of Willingness to Accept Financial Responsibility for the railroad line portion pursuant to 49 CFR § 1152.29. This statement is for the entire portion of WCL railroad line referenced in WCL’s Verified Notice, extending from milepost 112.9 to milepost 114.0, a distance of 1.10 miles, all within the City of Kaukauna, Outagamie County, Wisconsin.

**FILING FEE WAIVED**

## PURPOSE

Wisconsin Department of Transportation (WisDOT) filed a Petition for Interim Trail Use on behalf of the City of Kaukauna, Wisconsin (“KAU”) pursuant to 49 C.F.R. § 1152.29(a) and 49 C.F.R. § 1152.29(b)(3) on or near March 28, 2013. WisDOT petitioned 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 CKW for the full right of way involved in this proceeding. WisDOT and KAU 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. KAU currently owns the abutting abandoned railroad corridor trail, which connects to a multi-county trail system. KAU intends to connect the instant corridor with the multi-county trail system. WisDOT supports KAU efforts to acquire and utilize the right of way for public purposes.

## STATE AND MUNICIPAL RESPONSIBILITIES

KAU is a city chartered by the State of Wisconsin, pursuant to Chapter 66 of the Wisconsin statutes. Cities are statutorily authorized to acquire real property, and are empowered and required to promote the general welfare of its inhabitants. Secs. 62.04 and 62.22, Wis. Stats.

WisDOT is the designated state agency in rail matters in the State of Wisconsin. 49 CFR §1152.2(g), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats. WisDOT is responsible for all state and federally-aided highway construction and all state and federally-aided airport construction in Wisconsin. Secs. 84.01(2) and 114.32(1) and (5), Wis. Stats. WisDOT has the statutory first right to acquire for present or future transportation, recreational or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin. Sec. 85.09(2), Wis. Stats.

Pursuant to their respective duties and powers, WisDOT and KAU are working collaboratively to use the corridor for recreational trail use.

## **NOTICE OF INTERIM TRAIL USE**

**And**

### **REQUEST FOR EXTENSION OF NEGOTIATING PERIOD**

On or near March 28, 2013, WisDOT requested that the Board grant KAU a notice of interim bicycle, pedestrian and other trail use and rail banking condition to accomplish the above public purposes. WisDOT was and remains interested in having KAU acquire and use the right of way of the rail line being abandoned for interim bicycle, pedestrian or other trail use and rail banking. Included in the petition was a Statement of Willingness to Assume Financial Responsibility, executed by the Mayor of the City of Kaukauna, which included Exhibit 1, a map of the location of all needed property in the City of Kaukauna, Outagamie County, Wisconsin.

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

In response to the WisDOT petition, on Service Date April 18, 2013, the Board did grant the request for NITU, under 16 U.S.C. Sec. 1247(d) and 49 C.F.R. Sec. 1152.29, with a deadline of October 15, 2013 to reach an agreement.

Although no agreement has been reached, both parties, KAU and WCL are engaged in good faith, productive negotiations for KAU to acquire the property. KAU has recently completed acquisition of adjoining properties for the purpose of a trail extension, and remains

interested in acquiring this property for future trail use. We understand that WCL has completed track removal, and is actively working with KAU to proceed efficiently.

This is the first extension requested by KAU, and this is a new process for it. Due to its novelty, this extension filing deadline was not noticed, and did pass. Nevertheless, KAU and WisDOT remain committed to this project, and will improve its monitoring of the transaction.

### CONCLUSION

For the foregoing reasons, and because KAU is negotiating in good faith with WCL to acquire this property for NITU, respectfully requests the Board extend for 180 days the negotiation period to execute a trail use agreement for the land corridor and related real property referenced in this proceeding, that WCL railroad line from milepost 112.9 to milepost 114.0, a distance of 1.10 miles, all within the City of Kaukauna, Outagamie County, Wisconsin. This project will allow all forms of transportation to be developed and utilized in a unified, interconnected, economically efficient and environmentally sound manner.

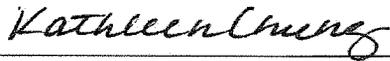
Respectfully Submitted,

*Kathleen Chung*

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December 18, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the foregoing Petition for NITU in regards to AB303 40, by electronic mail, or regular mail pursuant to 49 C.F.R. §1104.12, this 18<sup>th</sup> day of December 2013, on all parties of record on the service list.

  
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Kathleen Chung, Attorney  
State Bar no. 1032802  
Wisconsin Department of Transportation  
Office of General Counsel