

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
AB-303 (SUB-NO. 26X)  
WISCONSIN CENTRAL LTD. --  
NOTICE OF EXEMPTION FOR ABANDONMENT--  
IN ASHLAND COUNTY, WISCONSIN

ENTERED  
Office of Proceedings

APR 29 2011

Part of  
Public Record

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CITY OF ASHLAND WISCONSIN  
MOTION TO EXTEND TIME TO  
NEGOTIATE A NOTICE OF INTERIM TRAIL USE

229417

**BACKGROUND**

On a service date of June 3, 2004, the Surface Transportation Board (STB or Board) served notice that Wisconsin Central Ltd. (WCL) filed with the Surface Transportation Board a Notice of Exemption pursuant to 49 U.S.C. § 10502 and the Board's regulations at 49 C.F.R. § 1152.50. That Notice of Exemption is for WCL's abandonment of a .48 mile portion of its line of railroad between 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 C. Reiss Coal Company in Ashland, Ashland County, WI. The line traverses through United States postal zip code 54806.

On June 8, 2004, the City of Ashland (ASH) signed a Statement of Willingness to Accept Financial Responsibility pursuant to 49 C.F.R. § 1152.29. This statement is for the segment of WCL railroad from milepost 435.35 on Ashland's Lake Superior lakefront, traveling southwest along the lakefront 2,552 feet to a point where it connects with a private spur that used to serve C. Reiss Coal Company, a total of approximately 0.48 miles.

The Board issued a NITU under 49 C.F.R. § 1152.29, which was served on July 1, 2004, allowing the ASH until December 30, 2004, to negotiate a rail banking agreement with WCL.

In a joint petition filed on December 6, 2004, WCL and WisDOT for ASH filed a request for an additional 180-day extension of the negotiating period for the right-of-way. The Board issued a NITU under 49 C.F.R. § 1152.29, which was served on December 17, 2004 allowing ASH until June 28, 2005, to negotiate a rail banking agreement with WCL for the right-of-way between 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 C. Reiss Coal Company in Ashland.

In a petition filed on June 16, 2005, WisDOT for ASH filed a request for an additional 180-day extension of the negotiating period for the right-of-way. The Board issued a NITU under 49 C.F.R. § 1152.29, which was served on June 28, 2005 allowing ASH until December 25, 2005, to negotiate a rail banking agreement with WCL for the right-of-way between 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 C. Reiss Coal Company in Ashland.

In a petition filed on December 14, 2005, WisDOT for ASH filed a request for an additional 180-day extension of the negotiating period for the right-of-way. The Board issued a NITU under 49 C.F.R. § 1152.29, which was served on December 20, 2005 allowing ASH until June 23, 2006, to negotiate a rail banking agreement with WCL for the right-of-way between 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 C. Reiss Coal Company in Ashland.

In a petition filed on May 24, 2006, WisDOT for ASH filed a request for an additional 180-day extension of the negotiating period for the right-of-way. The Board issued a NITU under 49 C.F.R. § 1152.29, which was served on June 9, 2006 allowing ASH until December 20, 2006, to negotiate a rail banking agreement with WCL for the right-of-way between 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 C. Reiss Coal Company in Ashland.

In a petition filed on December 6, 2006, WisDOT for ASH filed a request for an additional 180-day extension of the negotiating period for the right-of-way. The Board issued a NITU under 49 C.F.R. § 1152.29, which was served on December 15, 2006 allowing ASH until June 22, 2007, to negotiate a rail banking agreement with WCL for the right-of-way between 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 C. Reiss Coal Company in Ashland.

In a petition filed on May 24, 2007, WisDOT for ASH filed a request for an additional 180-day extension of the negotiating period for the right-of-way. The Board issued a NITU under 49 C.F.R. § 1152.29, which was served on June 15, 2007 allowing ASH until December 15, 2007, to negotiate a rail banking agreement with WCL for the right-of-way between 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 C. Reiss Coal Company in Ashland.

On June 9, 2008, ASH filed a request for an additional extension of the negotiating period for the right-of-way. The Board granted a 90-day extension until September 10, 2008 by decision dated June 16, 2008. By decision served September 11, 2008, the Board granted ASH's subsequent request for an additional extension of the negotiating period for another 90 days until December 9, 2008.

By decision served December 10, 2009, the Board granted ASH's most recent request to extend the negotiating period for 180 days, and did extend the negotiating period until June 2, 2010. ASH and WCL are still engaged in active negotiations for this rail line, and ASH hereby

submits this request that the Board again grant an extension for the NITU negotiating period for 180 days.

Negotiations have continued in good faith between ASH and WCL. After the parties have secured a memorandum of understanding, they drafted and executed a purchase sale option. WCL is agreeable to an extension of time to continue negotiations under an NITU condition for the rail corridor between milepost 435.35 on Ashland's Lake Superior lakefront, traveling southwest along the lakefront 2,552 feet to a point where it connects with a private spur that used to serve C. Reiss Coal Company, a total of approximately 0.48 miles in the City of Ashland, in Ashland County.

A deed for the western portion of the rail segment, from Ellis Avenue west to Vaughn Avenue had been recorded. The negotiations were affected by the Superfund clean-up costs and findings by the United States Environmental Protection Agency, (EPA).

The EPA issued a Record of Decision on the clean-up of the Superfund site on September 30, 2010, which begins the process of identifying Responsible Parties for the clean-up. EPA believes that "special notice letters" will be issued within 120 days from issuance of the Record of Decision, which will allow the RP's to negotiate a settlement. ASH continues to actively engage in the environmental process, and continues to negotiate in good faith with WCL for the property.

Based on this ongoing environmental process, ASH filed a petition for extension of the NITU negotiating period on November 19, 2010. The Board did grant a 180-day extension by decision served December 29, 2010.

Finalizing the agreement on this section of former right-of-way is dependent upon decisions made by the EPA regarding the identification of parties responsible for the clean-up of

an area of the community designated as a Superfund Site by the agency. As of this writing, the EPA has issued its Record of Decision for the Ashland Lakefront NSP Site, the document that will specify the level of cleanup that will be required. When the EPA issues the ROD on September 30, 2010, it advised ASH that the Special Notice Letters would be issued by the end of 2010. The Special Notice Letters are the notices to those parties the EPA has concluded are responsible for the cleanup. As of this writing, the letters have not been issued.

Negotiations over this property will conclude when responsibility for the cleanup of possible contamination of the former railroad corridor is settled. The EPA is in control of the schedule. ASH and WCL remain actively interested in consummating this transaction.

#### MOTION

Therefore, ASH moves that the period prescribed to negotiate an interim trail use/rail banking agreement be extended for 180 days for the rail corridor between milepost 435.35 on Ashland's Lake Superior lakefront, traveling southwest along the lakefront 2,552 feet to a point where it connects with a private spur that used to serve C. Reiss Coal Company, a total of approximately 0.48 miles in the City of Ashland, in Ashland County.

Respectfully submitted,

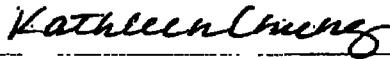
*Kathleen Chung*

Wisconsin Department of Transportation  
4802 Sheboygan Avenue, Room 115-B  
P. O. Box 7910  
Madison, WI 53707-7910  
(608) 266-8810  
4/28/11

Please contact Ms. Sheri Walz, WisDOT Railroads and Harbors Section during the month of May, [sheria.walz@dot.wi.gov](mailto:sheria.walz@dot.wi.gov), or (608) 267-7346.

## CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Request for Extension of the NITU Negotiating Period in regards to AB303 26X, by electronic mail or regular mail, pursuant to 49 C.F.R. §1104.12, this 28<sup>th</sup> day of April 2011, on all parties of record on the service list.



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