

Wisconsin Department of Transportation
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January 10, 2012

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

231656

ELECTRONIC FILING

RE: STB Finance Docket No. AB303 (Sub No. 38X)
Wisconsin Central Ltd. – Abandonment Exemption – Fond du Lac County,
Wisconsin

Dear Ms. Brown:

Wisconsin Department of Transportation is the state rail agency. Enclosed for filing is a Petition for NITU (including Petition to Reopen and Stay Effectiveness) by the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources, in the above listed Docket.

Sincerely,

Kathleen Chung

Kathleen Chung
Attorney

ENTERED
Office of Proceedings

JAN 11 2012

Part of
Public Record

Attachments

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-303 (SUB-No. 38x)

WISCONSIN CENTRAL LTD.
- ABANDONMENT EXEMPTION -
IN FOND DU LAC COUNTY, WISCONSIN

**WISCONSIN DEPARTMENT OF NATURAL RESOURCES (WisDNR)
PETITION FOR NOTICE OF INTERIM TRAIL USE**

BACKGROUND

Wisconsin Central Ltd., (“WCL”) filed with the Surface Transportation Board (Board) a Notice of Exemption under 49 C.F.R. § 1152 Subpart F – Exempt Abandonments to abandon a 0.60 mile line of railroad from milepost 175.40 to milepost 176.00 in Fond du Lac, Fond du Lac County, Wisconsin. The line traverses United States Postal Service Zip Code 54936.

On January 05, 2012, the Wisconsin Department of Natural Resources (WisDNR) signed a Statement of Willingness to Accept Financial Responsibility pursuant to 49 CFR § 1152.29. This statement is for the segment of WCL railroad extending from railroad milepost 175.40, located approximately at U.S. Highway 41, to railroad milepost 175.57, located approximately at W. Pioneer Road, a distance of approximately 0.17 miles, in the City of Fond du Lac, Fond du Lac County, Wisconsin.

FILING FEE WAIVED

PURPOSE

Wisconsin Department of Transportation (WisDOT) petitions to reopen and to stay effectiveness of this proceeding pursuant to 49 C.F.R. § 1152.29(e)(4) and 49 C.F.R. § 1152.29(e)(7). WisDOT petitions 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 WisDNR for specified segments of the right of way involved in this proceeding. WisDOT and WisDNR 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. WisDOT and WisDNR have agreed to work cooperatively to acquire and use the right of way.

STATE AND COUNTY RESPONSIBILITIES

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.

WisDOT has state statutory authority to incorporate trails into the highway right-of-way in sec. 84.06(11), Wis. Stats.:

“(11) State Trails. As a part of any highway improvement or as a separate project under this section, a portion of a hiking trail, cross-country ski trail,

bridle **trail or bicycle trail** under the management of a state agency, municipality or nonprofit **may be incorporated into the highway right-of-way**, and facilities for safe crossing of the highway may be provided.

WisDNR and WisDOT need the interim trail use designation to fulfill federal and state transportation and environmental responsibilities.

WisDOT respectfully requests that the Board reopen and stay the effectiveness of this proceeding to consider a trail use request pursuant to 49 C.F.R. § 1152.29(e)(4) and 49 C.F.R. § 1152.29(e)(7). Good cause exists to accept the late-filed trail use statement, because there is public benefit in allowing the trail use negotiations to go forward to preserve the corridor. Further, it was not possible to obtain required signatures over the holiday season when key WisDOT and WisDNR employees were unavailable. The Board retains jurisdiction because abandonment has not yet been consummated. Finally, WCL has indicated to WisDNR that it is willing to enter into trail negotiations.

NOTICE OF INTERIM TRAIL USE

If the petition to reopen and request to stay effectiveness is granted by the Board, WisDOT respectfully requests that the Board provide WisDNR a notice of interim bicycle, pedestrian and other trail use and rail banking condition to accomplish the above public purposes. WisDOT is interested in having WisDNR 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 this petition is a Statement of Willingness to Assume Financial Responsibility, executed by the Wisconsin Department of Natural Resources (WisDNR),

which includes Exhibit 1, a map of the location of all needed property in Fond du Lac, Wisconsin.

WisDNR'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 WisDNR would be inconsistent with or disruptive of potential future rail use.

CONCLUSION

WisDOT respectfully requests the Board to reopen and stay effectiveness of this proceeding to issue a Notice of Interim Trail Use for the land corridor and related real property, for the segment of WCL railroad, from milepost 175.40 located approximately at U.S. Highway 41, to railroad milepost 175.57 located approximately at W. Pioneer Rd., a distance of approximately 0.17 miles in Fond du Lac, Fond du Lac County, Wisconsin to WisDNR. This will allow all forms of transportation to be provided in a unified, interconnected, economically efficient and environmentally sound manner.

Respectfully Submitted,

Kathleen Chung

Kathleen Chung, State Bar No. 1032802
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115-B
P.O. Box 7910
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(608) 266-8810
January 10, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Petition for NITU in regards to AB303 38X, by electronic mail, or regular mail pursuant to 49 C.F.R. §1104.12, this 10th day of January 2012, on all parties of record on the service list.



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

FILING FEE WAIVED

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-303 (SUB-NO. 38X)

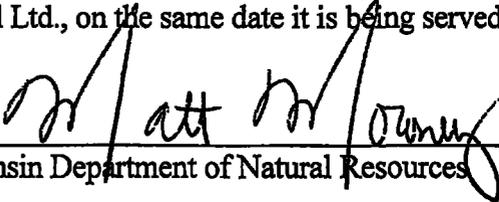
WISCONSIN CENTRAL LTD -- ABANDONMENT EXEMPTION --
IN THE TOWN OF FOND DU LAC, FOND DU LAC COUNTY, WISCONSIN

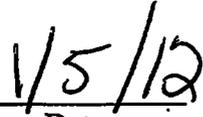
STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY BY
STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
PURSUANT TO 49 CFR 1152.29

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, the State of Wisconsin Department of Natural Resources (WDNR) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by the Wisconsin Central Ltd. and operated by Wisconsin Central Ltd. The property extends from railroad milepost 175.40 on the north side of U.S. Highway 41, to railroad milepost 175.57 on the south side of W Pioneer Road, a distance of approximately 0.17 miles in Fond du Lac, Fond du Lac County, Wisconsin. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-303 (Sub-No. 38X).

A map depicting the property depicting the right-of-way is attached as **Exhibit 1**.

WDNR acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad, Wisconsin Central Ltd., on the same date it is being served on the Board.


Wisconsin Department of Natural Resources


Date

By: Matt Moroney
Deputy Secretary
101 S Webster Street, Madison, WI 53703

WDNR contact:
Brigit Brown
State Trails Coordinator
101 S Webster Street, Madison, WI 53703
608-266-2183
brigit.brown@wisconsin.gov

FILING FEE WAIVED

