



Wisconsin Department of Transportation

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December 3, 2009

Ms. Cynthia Brown
Chief of the Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

RE: **STB Docket No. AB-303 (Sub-No. 26X)** Wisconsin Central Ltd.--Abandonment
Exemption--In Ashland County, WI -- Motion to Extend Time to Reach
Agreement on a Notice of Interim Trail Use

Dear Ms. Brown:

Attached please find the Motion to Extend Negotiating Period for NITU in above-entitled case submitted by the Wisconsin Department of Transportation on behalf of the City of Ashland. All parties of record have been electronically served with a copy of the Motion.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Chung".

Kathleen Chung
Wisconsin Department of Transportation

cc: Frank Huntington, WisDOT
Bill Waldron, Milwaukee County
Mark Schulte, UP
Mack Shumate, UP

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

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

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 90 days until December 9, 2008. Because of a scheduling error on my part, this request for an extension of 180 days is now submitted.

Negotiations are currently continuing in good faith between ASH and WCL. The parties have secured a memorandum of understanding, and are drafting final sales documents. However, more time is needed to finalize negotiations. 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 has been recorded. The eastern portion, from Ellis Avenue east to where 5th Avenue East would intersect the rail segment, is still under negotiation in good faith. ASH has an agreement with WCL to enter into an option to purchase the remaining ROW. ASH expects that it will exercise this option when negotiations conclude. In part the negotiations are affected by the Superfund clean-up costs and findings by the United States Environmental Protection Agency, (EPA).

On November 26, 2009, WCL advised it would concur with a request for an extension of the negotiating period, and on December 3, 2009, ASH advised Wisconsin DOT to submit such a request due to ongoing negotiations in good faith.

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,



Wisconsin Department of Transportation
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(608) 266-8810
12/3/09

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Request for Extension of the negotiating period in regards to **AB303 26X**, by electronic mail or regular mail, pursuant to 49 C.F.R. §1104.12, by electronic mail, this 3rd day of December 2009, on all parties of record on the service list.



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