

228406



Wisconsin Department of Transportation

www.dot.wisconsin.gov

Jim Doyle
Governor

Frank J. Busalacchi
Secretary

Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P.O. Box 7910
Madison, WI 53707-7910

Telephone: 608-266-8810
FAX 608-267-6734
E-mail: ogc_exec@dot.state.wi.us

December 9, 2010

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

RE: **STB Docket No. AB-303 (Sub-No. 18X) Wisconsin Central LTD.--Abandonment Exemption--In Polk County, WI -- Motion for Extension of Time to Reach Agreement on a Notice of Interim Trail Use**

Dear Ms. Brown:

By electronic filing, WisDOT files this Petition to Extend NITU negotiating period in the above-entitled matter. Copies of this filing have been served electronically on all parties of record.

Please contact me if you have any questions or if we can provide any additional information. Thank you for your attention.

Sincerely,

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

Kathleen Chung
Attorney

cc: Sheri Walz, WisDOT
Michael Barron, Jr., WCL
Richard Steffes, WisDNR

FILING FEE WAIVED

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-303 (SUB-NO. 18X)

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

**WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND POLK COUNTY JOINT
PETITION FOR EXTENSION OF NOTICE OF INTERIM TRAIL USE**

BACKGROUND

On November 24, 1997, Wisconsin Central Ltd. (WCL) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its line of railroad known as the Dresser-Amery line, between milepost 47.83 in Dresser and milepost 63.08 (the end of the line) in Amery, a distance of 15.25 miles, in Polk County, WI. The line traverses U.S. Postal Service ZIP codes 54001 and 54009, and includes the stations of Wanderoos at milepost 56.3 and Amery at milepost 62.9.

On September 16, 1997, the State of Wisconsin Department of Natural Resources (WisDNR) 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 line between Dresser Milepost 47.83 and Amery Milepost 63.08, a distance of approximately 15.25 miles in Polk County, Wisconsin.

On December 18, 1997, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources filed a request for a Notice of Interim Trail Use/rail banking (NITU) under 16 U.S.C. 1247(d) and 49 CFR 1152.29. WCL indicated its willingness to negotiate with WisDNR for interim trail use.

The Board issued a NITU under 49 CFR 1152.29, which was served on March 13, 1998, allowing the WisDNR the full 180 days from date of service to negotiate a rail banking agreement with WCL. On September 4, 1998, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources filed a motion for extension of the negotiating period for 180 days. Under service date of October 2, 1998, the Board ordered that the NITU negotiating period is extended to March 8, 1999.

On November 19, 1998, Polk County sent a Statement of Willingness to WCL and the Board for this same segment of WCL railroad. Polk County is working closely with WisDNR to acquire the rail corridor.

On February 23, 1999, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources filed a motion for extension of the negotiating period for 180 days. Under service date of March 5, 1999, the Board ordered that the NITU negotiating period is extended to September 4, 1999.

On August 17, 1999, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and WCL filed a joint motion for extension of the negotiating period for 180 days. Under service date of August 30, 1999, the Board ordered that the NITU negotiating period is extended to March 2, 2000.

On February 18, 2000, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and WCL filed a joint motion for extension of the

negotiating period for 180 days. Under service date of March 1, 2000, the Board ordered that the NITU negotiating period is extended to August 29, 2000.

On August 11, 2000, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and WCL filed a joint motion for extension of the negotiating period for 180 days. Under service date of August 23, 2000, the Board ordered that the NITU negotiating period is extended to February 25, 2001.

On February 9, 2001, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and WCL filed a joint motion for extension of the negotiating period for 180 days. Under service date of February 27, 2001, the Board ordered that the NITU negotiating period is extended to August 24, 2001.

On August 23, 2001, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and WCL filed a motion for extension of the negotiating period for 180 days. Under service date of August 29, 2001, the Board ordered that the NITU negotiating period is extended to February 20, 2002.

On January 30, 2002, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and WCL filed a motion for extension of the negotiating period for 180 days. Under service date of February 19, 2002, the Board ordered that the NITU negotiating period is extended to August 19, 2002.

On August 12, 2002, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and WCL filed a motion for extension of the negotiating period for 180 days. Under service date of August 15, 2002, the Board ordered that the NITU negotiating period is extended to February 15, 2003.

On February 3, 2003, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and WCL filed a motion for extension of the

negotiating period for 180 days. Under service date of February 14, 2003, the Board ordered that the NITU negotiating period is extended to August 14, 2003.

On July 28, 2003, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and WCL filed a motion for extension of the negotiating period for 180 days. Under service date of August 13, 2003, the Board ordered that the NITU negotiating period is extended to February 10, 2004.

On January 28, 2004, the Wisconsin Central Limited and Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources filed a motion for extension of the negotiating period for 180 days. Under service date of February 10, 2004, the Board ordered that the NITU negotiating period is extended to August 8, 2004.

On July 27, 2004, the Wisconsin Central Limited and Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources filed a motion for extension of the negotiating period for 180 days. Under service date of August 5, 2004, the Board ordered that the NITU negotiating period is extended to February 4, 2005.

On January 24, 2005, the Wisconsin Central Limited and Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources filed a motion for extension of the negotiating period for 180 days. Under service date of January 31, 2005, the Board ordered that the NITU negotiating period is extended to August 3, 2005.

On July 14, 2005, Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and Polk County filed a motion for extension of the negotiating period for 180 days. Under service date of July 26, 2005, the Board ordered that the NITU negotiating period is extended to January 30, 2006.

On January 18, 2006, Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and Polk County filed a motion for extension of the

negotiating period for 180 days. Under service date of January 30, 2006, the Board ordered that the NITU negotiating period is extended to July 29, 2006.

On July 7, 2006, Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and Polk County filed a motion for extension of the negotiating period for 180 days. Under service date of July 28, 2006, the Board ordered that the NITU negotiating period is extended to January 25, 2007.

On January 18, 2007, Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and Polk County filed a motion for extension of the negotiating period for 180 days. Under service date of January 24, 2007, the Board ordered that the NITU negotiating period is extended to July 24, 2007.

On July 16, 2007, Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and Polk County filed a motion for extension of the negotiating period for 180 days. Under service date of July 24, 2007, the Board ordered the NITU negotiating period extended to January 20, 2008.

On January 18, 2008, the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources and Polk County filed a motion for extension of the negotiating period for 180 days. On February 1, 2008, the Board granted the request, and ordered the NITU negotiating period extended to July 18, 2008.

On July 2, 2008, WisDNR and Polk County requested that the Board grant an extension of the negotiating period, and WCL concurred by letter. The Board granted the request on service date July 15 2008, and extended the negotiating period until January 13, 2008.

WisDNR made an initial timely offer to WCL. The sale of the portion of track between milepost 49.6 and milepost 63.08 has been completed, but the parties are still negotiating in good

faith on the portion between milepost 47.83 and milepost 49.6, and more time is needed to finalize negotiations. The parties recognize the need for progress on this transaction, and respectfully request that the negotiating period be extended.

On January 18, 2009 WisDNR and Polk County requested an extension of the NITU, which WCL endorsed. The Board granted the request for an extension, and extended the negotiating period until July 13, 2009.

On July 10, 2009, WisDNR and Polk County again requested an extension of the NITU, and WCL concurred with the request. The Board granted the request for an extension, and extended then negotiating period until January 9, 2010.

The portion of the rail segment from Milepost 49.6 to Milepost 63.08 has been conveyed to WisDNR, but negotiations continue for the remaining segment from Milepost 47.83 to Milepost 49.6. This remaining segment would connect the full segment to Dresser, and its status is still being negotiated in good faith by the parties.

On January 5, 2010, Polk County and WisDNR through WisDOT filed a petition for extension for the NITU for 180 days. By decision dated March 4, 2010, the Board granted an extension until July 8, 2010. Upon request by WisDNR, the Board granted another 180 day extension, which expires January 4, 2011.

The situation since the Board last granted an extension has not materially changed.

A potential customer, a quarry, is still seeking regulatory approval to begin operations. If this customer develops, WCL would like to it, and would not abandon the line. If the customer does not develop, WCL and WisDNR expect that their negotiations will result in successful railbanking of this line segment.

Although both parties remain very interested in this project, no further information has been received regarding the quarry permit approval since the Board last granted an extension for this NITU by decision dated July 8, 2010. Despite the unusual length of negotiation period, both parties are committed to the successful consummation of this trail and seek additional to complete the transaction.

DNR and WCL respectfully request that the Board allow the NITU to be extended for 180 days. If the NITU lapses and WCL does not consummate the abandonment, WCL may be forced to rehabilitate the line to meet its common carrier obligation even though no current consumer exists on the line. Alternatively, if DNR purchases the line for trail use before the consumer develops, the line will have to go through the regulatory process of reactivation. Both DNR and WCL agree that the current status, although not ideal, does afford both parties, the public and the business interest the most advantageous position to best use the rail segment when the relevant circumstances are resolved.

MOTION

Therefore, WisDNR and Polk County move that the period prescribed to negotiate an interim trail use/rail banking agreement be extended for 180 days. It is my understanding that Wisconsin Central, Ltd. will concur with this request.

Respectfully submitted,



Kathleen Chung, State Bar No. 1032802
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115-B
P. O. Box 7910 Madison, WI 53707-7910
(608) 266-8752

December 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused the following petition for extension of NITC in regards to AB303 18X, by electronic mail, pursuant to 49 C.F.R. §1104.12, this 9th day of December, 2010, on all parties of record on the service list.

Kathleen Chung

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