

## Wisconsin Department of Transportation

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April 22, 2015

238255

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

ENTERED  
Office of Proceedings  
April 22, 2015  
Part of  
Public Record

RE: **STB Docket No. AB-33 (Sub-No. 268X)** Union Pacific Railroad – Notice of Exemption for Abandonment – In Milwaukee County, Wisconsin, Motion to Extend Time for Negotiation of Interim Trail Use Agreement.

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 County of Milwaukee, Wisconsin.

WisDOT respectfully submits this corrected Motion to replace the motion filed earlier today, which contained original milepost and total mileage information. That information was amended by the Union Pacific Railroad, and this Motion correctly recites the updated information.

All parties of record have been electronically served with a copy of the Motion.

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|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| <br><b>GRANTED</b><br>Office of<br>Proceedings | DECISION ID NO.: <u>44447</u>                                   |
|                                                                                                                                  | DECIDED DATE: <u>5/5/15</u>                                     |
|                                                                                                                                  | SERVICE DATE: <u>5/16/15</u>                                    |
|                                                                                                                                  | APPROVED: <u>Rachel Campbell</u><br>Director                    |
|                                                                                                                                  | <input checked="" type="checkbox"/> <u>Extended to 12/5/15.</u> |

Sincerely,

*Kathleen Chung*

Kathleen Chung  
Wisconsin Department of Transportation

cc: Bill Waldron, Milwaukee County, Wisconsin  
Mack Shumate, UP  
Kim Tollers, WisDOT

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
**AB-33 (SUB-NO. 268X)**  
UNION PACIFIC RAILROAD. --  
NOTICE OF EXEMPTION FOR ABANDONMENT--  
IN MILWAUKEE COUNTY, WISCONSIN

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**COUNTY OF MILWAUKEE, WISCONSIN  
MOTION TO EXTEND TIME TO  
NEGOTIATE A NOTICE OF INTERIM TRAIL USE**

**BACKGROUND**

On service date June 11, 2009, the Surface Transportation Board (the Board) served notice that the Union Pacific Railroad Company (UP) 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 Subpart F – Exempt Abandonments to abandon a 2.85-mile line of railroad known as the Capitol Industrial Lead, from milepost 91.98, the Shoreline connection, to the end of the line at milepost 89.13, south of Hampton Avenue in the northeast area of Milwaukee, in Milwaukee County, WI. This portion of the line traverses United State Postal Service Zip Codes 53209, 53211, 53212 and 53217.

On May 11, 2009, the County of Milwaukee (CMW) signed a Statement of Willingness to Accept Financial Responsibility pursuant to 49 C.F.R. § 1152.29 for the segment of UP railroad from milepost 91.98 to milepost 89.13, a total of approximately 2.85 miles.

The Board granted an NITU under 16 U.S.C. 1247(d), which was served on June 12, 2009, allowing CMW until December 9, 2009, to negotiate a rail banking agreement with UP for the segment.<sup>1</sup> The Milwaukee County Board of Supervisors expressed its commitment to the

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<sup>1</sup> In its initial filing, UP identified the segment at issue as being from milepost 92.21 to milpose 89.13, a distance of

acquisition of the subject corridor in 2009 through its authorization to submit a Federal Transportation Program grant application that seeks funding assistance for the acquisition of rights to the subject corridor and for development of a multiple-use trail therein.

The funding request submitted by the CMW to the Congestion Mitigation and Air Quality Improvement Program, administered by the Federal Highway Administration and WisDOT, was granted and the award is sufficient for consummation of this project.

Land acquisition through the CMAQ Program is a lengthy and complex process. The first step was the completion of an Environmental Report and a Design Study Report. These reports, which were submitted before formal negotiations with the UP Railroad could commence, ensured that potential issues/problems (environmental, structural, historical) that might have necessitated modifications to the preliminary trail alignment were identified before an agreement for transfer of ownership of the land was reached.

In April 2012, WisDOT issued a work authorization allowing CMW to execute contracts with consultants to undertake activities associated with completion of the Environmental Report and the Design Study Report.

On November 12, 2012, CMW filed a request to extend the time period to negotiate an interim trail use/rail banking agreement for 180 days. On service date November 21, 2012, the Board did grant the request, and extended the negotiation time period to May 15, 2013.

CMW has been following a strict WisDOT process for implementation of the federal CMAQ grant awarded for the acquisition of the corridor. CMW has provided WisDOT with information pertaining to preliminary engineering including environmental assessment,

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3.08 miles. On October 29, 2014, UP advised the Board that it had determined that it was only willing to abandon the

preliminary trail alignment, and preliminary bridge design for converting the bridges to trail use, all of which was combined into a required Design Study Report.

In April 2013, CMW began its preparation of acquisition plat, and hired a title company to help clarify ownership of the corridor. CMW filed a request with the Board to extend the negotiation period on May 2, 2013. On service date May 13, 2013, the Board granted the request and extended the negotiation period to November 11, 2013.

The Environmental Document and Design Study Report were under review by WisDOT and FHWA during September and October of 2013, with approval for final corrections were expected November 2013. The draft Right-of-Way ("ROW") plat was near completion pending approval of the Environmental Document and Design Study Report.

On November 12, 2013, CMW filed a petition with the Board to extend the negotiation period another 180 days to continue the approvals and acquisition process. On service date November 21, 2013, the Board granted the request, and extended the negotiation period to May 12, 2014.

Because the transaction was not complete, but negotiations were continuing in good faith, on May 5, 2014, CMW filed a petition with the Board to extend the negotiation period for 180 days. By decision served May 9, 2014, the Board did grant an extension to November 6, 2014.

The preliminary engineering phase of the project has been completed. WisDOT has approved the Environmental Documentation and the Design Study Report. Approval of the Design Study Report has triggered WisDOT process to authorize expenditure of federal funds

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a segment from milepost 91.98 to milepost 89.13, a distance of 2.85 miles. CMW and UP continue to negotiate for

for the real estate acquisition.

CMW completed and executed the Real Estate Consultant Contract, and the appraisal and offer were sent to UP. CMW is also working on required construction easements and other agreements necessary for design and construction of the trail project.

On October 14, 2014, because the acquisition process was proceeding smoothly, but not yet completed, CMW requested that the Board extend the negotiating period for another 180 days.

On October 28, the UP replied that it assented to the requested extension. UP also advised the Board that it determined that it was only willing to convey the portion of railroad corridor from Milepost 91.98 to milepost 89.13, a distance of 2.85 miles. The parties continued to negotiate for this shorter segment.

Therefore, on service date of December 9, 2014, the Board did extend the negotiating period for 180 days until June 9, 2015.

Since then, CMW has continued its acquisition and construction process to accommodate a trail. The bicycle trail design has been completed, and construction bids have been received and are awaiting authorization to proceed. That authorization will proceed upon the completion of the acquisition process. CMW and UP have come to agreement on the limits and price of the acquisition, and are actively negotiating the conditions of the property transfer. Good faith negotiations are proceeding well, so a tentative date of May 11, 2015 has been set for closing on the transfer of ownership.

Because the current negotiating period expires within one month of the anticipated

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this shorter segment.

closing, and to minimize any risk of exceeding the current time limit, CMW does now request that the Board extend the negotiating period for another 180 days.

#### **MOTION**

Therefore, CMW respectfully 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 91.98 to milepost 89.13, a total of approximately 2.85 miles in the City of Milwaukee, in Milwaukee County, Wisconsin.

Respectfully submitted,

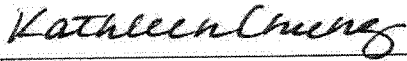


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April 22, 2015

## CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing cover letter in regards to **AB33** **(Sub-No. 268X)**, by electronic mail or regular mail, pursuant to 49 C.F.R. §1104.12, this 22<sup>nd</sup> day of April, 2015, on all parties of record on the service list.

A handwritten signature in cursive script, reading "Kathleen Chung", is written over a horizontal line.

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