

 GRANTED Office of Proceedings	DECISION ID NO.: <u>42401</u>
	DECIDED DATE: <u>5/16/12</u>
	SERVICE DATE: <u>5/17/2012</u>
	APPROVED: <u><i>Patricia Campbell</i></u> Director
☒ <u>extended to 11/18/12.</u>	

BEFORE THE
SURFACE TRANSPORTATION BOARD
AB-303 (SUB-NO. 26X)
WISCONSIN CENTRAL LTD. --

232291

NOTICE OF EXEMPTION FOR ABANDONMENT--
IN ASHLAND COUNTY, WISCONSIN

ENTERED
Office of Proceedings
May 9, 2012
Part of
Public Record

**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.

FILING FEE WAIVED

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 requested that the Board again grant an extension for the NITU negotiating period for 180 days.

The parties secured a memorandum of understanding, and they drafted and executed a purchase sale option. A deed for the western portion of the rail segment, from Ellis Avenue west to Vaughn Avenue has been recorded. The negotiations continue to be affected by the Superfund clean-up costs and findings by the United States Environmental Protection Agency, (EPA).

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.

The EPA issued a Record of Decision on the clean-up of the Superfund site on September 30, 2010, which began the process of identifying Responsible Parties for the clean-up. "Special Notice Letters" have been issued, and the RP's may negotiate an informed settlement.

Based on this ongoing environmental process, ASH filed a petition for extension of the NITU negotiating period on November 19, 2010. The Board granted a 180-day extension by decision served December 29, 2010, to May 28, 2011.

ASH filed a petition for extension on April 29, 2011 for another 180-day extension while it continued in the environmental process, which request the Board granted by decision served May 16, 2011. The negotiating period thereby was extended to November 24, 2011.

Decisions made by the EPA regarding the roles of responsible parties for the clean-up of the Superfund Site affect negotiations. After the EPA issues the Special Notice Letters to RFP's, ASH and other potentially responsible parties initiated communications regarding the clean-up responsibilities and process, and moved the Board to extend the negotiating period for 180 days.

The Board granted this request, and extended the negotiating period for 180 days to May 22, 2012, by decision served November 22, 2011.

Because these negotiations are complex, and are continuing in good faith, ASH is now requesting another 180-day extension to continue its good faith negotiations with WCL for the property.

When responsibility for the cleanup of possible contamination of the former railroad corridor is resolved, the parties will continue their negotiations to convey the property for trail use. ASH and WCL remain actively interested in consummating this transaction.

MOTION

Therefore, ASH respectfully moves the Board to extend the NITU negotiating period for 180 days, only for portion of the rail line segment that has not yet been conveyed: The eastern portion of the rail segment that runs easterly, from Ellis Ave. to MP 435.35 in Ashland, Ashland County, WI.

Respectfully submitted,

Kathleen Chung

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5/09/12

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 9th day of May 2012, on all parties of record on the service list.

Kathleen Chung

Kathleen Chung, Attorney
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Wisconsin Department of Transportation
Office of General Counsel