



GRANTED

Office of
Proceedings

DECISION ID NO.: 43459
DECIDED DATE: 11/20/13
SERVICE DATE: 11/21/13
APPROVED: Rachel Campbell
Director

☒ extended to 5/12/14

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

235063
ENTERED
Office of Proceedings
November 12, 2013
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.

ASH has been working diligently to advance their objective of acquiring the subject property for trail use. ASH and the United States of America moved the District Court of the Western District of Wisconsin for approval of the consent decree lodged with the court for public comment on August 8, 2012. By Order dated October 18, 2012, the Court approved the consent decree. According to the consent decree for Phase I of the cleanup, remediation of the area that includes the railroad rights-of-way should be completed by December 31, 2013.

On service date November 20, 2012, the Board extended the negotiating period, at ASH's request for 180 days, to May 17, 2013. Upon request dated May 13, 2013, the Board then extended the negotiating period for 180 days to November 13, 2013.

Parties continue the lengthy, the environmental process, and the acquisition process continues in good faith. The remediation of the soil within the on-land portion of the site was expected to begin by September of this year, and continue through December, 2014.

However, the on-going Superfund Site and related negotiations are complex, time-consuming, and are occasionally delayed. Nevertheless, during this protracted negotiation period, the established right-of-way is preserved for future rail service, and all benefits of the rail preservation program accrue.

The acquisition of this corridor fits well into ASH's post Superfund plans for the community's lakefront. ASH still intends to take possession of this property upon the completion of remediation and release of liability.

WCL and ASH have indicated both parties would concur in requesting another 180-day extension to continue good faith negotiations for the WCL property.

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,



Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115-B
P. O. Box 7910
Madison, WI 53707-7910
(608) 266-8810

11/11/13

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 11th day of November, 2013, 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