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SERVICE DATE—LATE RELEASE NOVEMBER 7, 2011

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 308 (Sub-No. 4X)

CENTRAL MICHIGAN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
KENT COUNTY, MICH.

Decided: November 4, 2011

Central Michigan Railway Company (CMRY) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 1.75-mile line of railroad, consisting of the following three interconnected segments: (1) a line (segment A) extending from milepost 157.96 (at the switch connection with the east-west aligned tracks of the Mid-Michigan Railroad, Inc. (MMR) near the intersection of Taylor Avenue and Quimby Street) through valuation map marker 9+87.2 (the location of the south wye, or Press Track, switch adjacent to Monroe Avenue) and continuing to the end of the track at a point immediately north of Michigan Street/Bridge Street; (2) a line (segment B) extending from valuation map marker 3+00 (at a switch connection with a line of MMR immediately at the east end of the MMR bridge spanning the Grand River) to a connection with segment A at valuation map marker 9+87.2 (at the south wye switch); and (3) a line (segment C) extending from valuation map marker 0+00 (at a point of connection with the east-west aligned MMR line immediately to the east of the MMR line's bridge spanning the Grand River) due northward to valuation map marker 11+15.0 (approximately 250 feet south of Ann Street), in Grand Rapids, Kent County, Mich. Notice of the exemption was served and published in the Federal Register on April 1, 2009 (74 Fed. Reg. 14,862-63).

By decision and notice of interim trail use or abandonment (NITU) served on April 30, 2009, the proceeding was reopened and a 180-day period was authorized for the Michigan Department of Natural Resources (MDNR) to negotiate an interim trail use/rail banking agreement with CMRY for the right-of-way involved in this proceeding pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d). By a series of decisions, the most recent served on May 16, 2011, the NITU negotiating period was extended until October 17, 2011.

On October 3, 2011, MDNR filed a letter stating that it had successfully completed negotiations on a trail use agreement with CMRY. MDNR states, however, that the completed negotiations do not include a portion of the line approximately 3,327 feet in length and described as that part of segment A that is south of the point of intersection of the west line of Monroe Street with the center line of the existing rail corridor and continuing to the end of the track at a point immediately north of Michigan Street/Bridge Street (segment D).

On October 18, 2011, Dark Properties, Inc. (Dark Properties), a Michigan corporation, filed a letter requesting issuance of a NITU for segment D. Dark Properties' request includes a statement of willingness to assume full responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of all taxes that may be levied or assessed against the right-of-way, as required by 49 C.F.R. § 1152.29. Dark Properties' request also includes a letter from CMRY stating that it is willing to negotiate for interim trail use. On October 20, 2011, Dark Properties supplemented its October 18 letter and acknowledges that the use of the right-of-way for interim trail use is subject to Dark Properties continuing to meet its responsibilities and obligations and is also subject to possible future reconstruction and reactivation of the right-of-way for rail service.¹

Dark Properties' submission, as supplemented, meets the requirements of 49 C.F.R. § 1152.29. Accordingly, Dark Properties' request will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on April 30, 2009, is modified to vacate from the NITU that portion of the line approximately 3,327 feet in length and described as that part of segment A that is south of the point of intersection of the west line of Monroe Street with the center line of the existing rail corridor and continuing to the end of the track at a point immediately north of Michigan Street/Bridge Street.
3. A replacement NITU applicable to Dark Properties as interim trail user is issued for the portion of the line described in this decision as segment D, effective on the service date of this decision and notice, for a period of 180 days from the service date, until May 5, 2012.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If the new trail user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

¹ The October 20 filing also included a letter from CMRY correcting a typographical error in its October 18 letter which stated that it was willing to negotiate with MDNR. The October 20 letter indicates that CMRY is willing to negotiate interim trail use/rail banking with Dark Properties.

6. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.