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SERVICE DATE – NOVEMBER 25, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-364 (Sub-No. 16X)

MID-MICHIGAN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN MUSKEGON
COUNTY, MI

Decided: November 24, 2009

Mid-Michigan Railroad, Inc. (MMRR), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 3.35-mile line of railroad between milepost 191.40 and milepost 194.75, at the end of the line, in Muskegon County, MI. Notice of the exemption was served and published in the Federal Register on April 20, 2009 (74 FR 18020-21). By decision and notice of interim trail use or abandonment (NITU) served on May 19, 2009 (May 2009 decision), the proceeding was reopened and a 180-day period was authorized for the Michigan Department of Natural Resources (MI DNR) to negotiate an interim trail use/rail banking agreement with MMRR for a 0.5-mile portion of the right-of-way between milepost 191.40 and milepost 191.90 pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).¹ The negotiating period under the NITU expired on November 15, 2009.

On November 12, 2009, MI DNR filed a request to extend the NITU negotiating period for an additional 180 days. MI DNR states that MI DNR and MMRR are continuing negotiations towards an agreement and expect to complete an agreement within 180 days. By letter filed on November 13, 2009, MMRR states that it is willing to continue to negotiate trail use with MI DNR for another 180 days until May 14, 2010. MMRR also requests an extension of time, until July 13, 2010, to exercise abandonment authority.²

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction, and the NITU negotiating period may

¹ In the May 2009 decision, the exemption was made subject to two consultation conditions regarding the salvage of the line. In a letter filed on July 23, 2009, MMRR advised the Board that it has complied with one of the conditions.

² Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

be extended.³ Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Also, an extension of time to consummate the abandonment and to file a notice of consummation in this proceeding is justified. Accordingly, the NITU negotiating period for the 0.5-mile portion of the right-of-way between milepost 191.40 and milepost 191.90 will be extended for an additional 180 days, from November 15, 2009, to May 14, 2010, and the consummation notice filing deadline will be extended to July 13, 2010.

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

It is ordered:

1. MI DNR's request to extend the NITU negotiating period is granted.
2. MMRR's request to extend the time to consummate the abandonment and file a notice of consummation is granted.
3. The NITU negotiating period for the 0.5-mile portion of the right-of-way between milepost 191.40 and milepost 191.90 is extended to May 14, 2010.
4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before July 13, 2010.
5. This decision is effective on its service date.

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

³ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).