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SERVICE DATE – FEBRUARY 7, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 635X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–  
IN GRATIOT COUNTY, MI

Decided: February 4, 2005

CSX Transportation, Inc. (CSXT) and Mid-Michigan Railroad, Inc. (MMR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuance of Service for CSXT to abandon and MMR to discontinue service over approximately 5.5 miles of railroad from milepost CBE-40.00 at Alma, to milepost CBE-45.5 at Elwell, in Gratiot County, MI. Notice of the exemption was served and published in the Federal Register (68 FR 38420) on June 27, 2003.<sup>1</sup>

By decision and notice of interim trail use or abandonment (NITU) served July 29, 2003, the proceeding was reopened, and the Friends of Fred Meijer Heartland Trail (Heartland Trail) was authorized to negotiate an interim trail use/rail banking agreement with CSXT for the entire line pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).<sup>2</sup> The negotiating period under the NITU was extended by decisions served on January 22, 2004, and August 9, 2004, with the most recent extension expiring on January 23, 2005.

On January 26, 2005, CSXT filed a request for an extension of the NITU negotiating period until July 22, 2005. CSXT states that it has not consummated the abandonment, has not been able to finalize negotiations with Heartland Trail, and desires to continue to negotiate for interim trail use/rail banking with Heartland Trail. Additionally, CSXT requests an extension of the consummation notice filing deadline until September 19, 2005.

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<sup>1</sup> The notice served June 27, 2003, embraced STB Docket No. AB-364 (Sub-No. 9X), Mid-Michigan Railroad, Inc.–Discontinuance of Service Exemption–in Gratiot County, MI.

<sup>2</sup> The July 29 decision also imposed a public use condition that expired on January 25, 2004, and three environmental conditions consisting of: (1) a National Geodetic Survey (NGS) condition; (2) a State of Michigan Department of Environmental Quality (MIDEQ) condition; and (3) a historic preservation condition. The historic preservation condition was removed by decision served October 28, 2003. The October 28 decision also noted that the NGS and MIDEQ conditions imposed in the July 29 decision remain in effect.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an 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) cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiation period will be extended to July 22, 2005, and the consummation notice filing deadline will be extended to September 19, 2005.

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

It is ordered:

1. CSXT's request for an extension of the negotiating period and its request for an extension of time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended to July 22, 2005.
3. The authority to abandon must be exercised on or before September 19, 2005.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary