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SERVICE DATE - MAY 17, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-534 (Sub-No. 2X)

LAKE STATE RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
ALPENA AND PRESQUE ISLE COUNTIES, MI

Decided: May 14, 2002

On May 22, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the Michigan Department of Natural Resources to negotiate an interim trail use/rail banking agreement with Lake State Railway Company (Lake State) for a portion of Lake State's Huron Subdivision (the main line) extending northward from the U.S. Highway 23 crossing in Alpena (milepost 125.2) to the end of the main line just north of Metz, MI (milepost 151.25), and Lake State's entire Rogers City Branch extending northward from a point on the main line at Posen, MI (milepost 141.8), to Rogers City, MI, ending at RCB milepost 11.5, a distance of 37.55 miles, in Alpena and Presque Isle Counties, MI. The negotiating period under the NITU was extended by decisions served on November 17, 2000, May 4, 2001, and December 18, 2001. The latest extension was scheduled to expire on May 12, 2002.

By letter filed on May 10, 2002, Lake State requests an additional 180-day extension of the negotiating period. It states that the parties are continuing their negotiations and hope to complete an agreement within 180 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.¹ 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), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for 180 days from May 12, 2002, or until November 8, 2002.

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

¹ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

It is ordered:

1. Lake State's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended for 180 days until November 8, 2002.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary