

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1107X

WEST MICHIGAN RAILROAD CO.—ABANDONMENT
EXEMPTION—IN VAN BUREN COUNTY, MICH.

Decided: April 15, 2014

West Michigan Railroad Co. (WMI) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 10.67 miles of rail line between milepost 19.88 (west of the line's crossing of 56th Street near Lawrence) and milepost 30.55 (east of Kalamazoo Street in Paw Paw), in Van Buren County, Mich. Notice of the exemption was served and published in the Federal Register on January 28, 2013 (78 Fed. Reg. 5,867). The exemption was scheduled to become effective on February 27, 2013, but a formal expression of intent to file an offer of financial assistance (OFA) to purchase the entire line was filed on February 6, 2013, by Great Lakes Locomotive, LLC, which had the effect of staying the effective date of the exemption.

On February 11, 2013, a request for the issuance of a notice of interim trail use and rail banking (NITU) under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, and for a public use condition under 49 U.S.C. § 10905, was filed by Friends of the Kal-Haven Trail and Van Buren County Board of Park Trustees (proponents), in order to negotiate with WMI for acquisition of the right-of-way for use as a trail. By decision served on March 8, 2013,¹ the NITU and public use requests were held in abeyance pending completion of the OFA process. In a Decision and Notice of Interim Trail Use or Abandonment served on June 7, 2013, the OFA process was terminated and trail use and public use conditions were imposed for 180 days (until December 5, 2013).

On February 3, 2014, proponent filed a request to extend the NITU and public use negotiating periods for the entire line for 180 days.² By letters filed, respectively, on January 31, 2014 and February 4, 2014, WMI notified the Board that it had consummated the abandonment

¹ The March 8 decision also imposed three environmental conditions: an historic preservation condition (which was removed in a decision served March 27, 2013) and two consultation conditions (which remain in effect).

² The public use condition imposed in this proceeding was for the maximum 180-day period, which expired on December 5, 2013, and may not be extended. Consequently, proponent's request for an extension of that period will be denied.

of two portions of the line: first, between mileposts 30.2 and 30.55, and second, between mileposts 25.1 and 26.5. By letter filed on February 21, 2014, WMI notified the Board that it is continuing trail use negotiations, and is willing to extend the negotiating period with proponent for the remaining unconsummated portions of the line: (1) between mileposts 19.88 and 25.1, and (2) between mileposts 26.5 and 30.2. WMI adds that, although it has sold the segment between mileposts 25.1 and 26.5, in recognition of the rail restoration provision in trail use agreements, the sale agreement covering that portion of the line included a provision for the re-acquisition of the property by WMI, which would allow for restored rail service for the portion east of milepost 26.5.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period for portions of the line and is willing to continue trail use negotiations for those portions of the line, the Board retains jurisdiction, and the NITU negotiating period may 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 Vill. v. Mo. Pac. R.R., 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. Accordingly, the NITU extension request will be granted for a period of 180 days from the December 5, 2013 expiration date for the portions of the line: (1) between mileposts 19.88 and 25.1, and (2) between mileposts 26.5 and 30.2.

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

It is ordered:

1. The request to extend the public use condition is denied.
2. The request to extend the NITU negotiating period is granted to the extent discussed above, and the NITU negotiating period is extended for 180 days, until June 3, 2014, for the following portions of the line: (1) between mileposts 19.88 and 25.1, and (2) between mileposts 26.5 and 30.2.
3. This decision is effective on its service date.

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

³ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).