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SERVICE DATE - LATE RELEASE MAY 6, 2004

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 6, 2004

By decision and notice of interim trail use or abandonment (NITU) served on May 22, 2000, a 180-day period was authorized for the Michigan Department of Natural Resources (MIDNR) 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 180-day period under the NITU was extended by decisions served on November 17, 2000, May 4, 2001, December 18, 2001, May 17, 2002, November 8, 2002, May 23, 2003, and November 10, 2003. The latest extension expired on May 1, 2004.

In the May 23, 2003 decision, the NITU negotiating period was extended, at the request of Lake State, only for the portion of Lake State's Huron Subdivision 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 Rogers City Branch extending northward from a point on the main line at Posen, MI (milepost 141.8), to Rogers City, MI, ending at milepost 6.7. The decision excluded from the NITU the portion of the right-of-way extending from milepost 6.7 to milepost 11.5 on the Rogers City Branch and stated that Lake State may fully abandon that portion, subject to meeting the conditions imposed in the May 22, 2000 decision and notice. By decision served on August 8, 2003, Lake State's request to modify the May 23, 2003 decision to include interim trail use/rail banking for the portion of the right-of-way extending from milepost 6.7 to milepost 11.5 on the Rogers City Branch was granted.

On April 7, 2004, Lake State filed a letter stating that it had inadvertently described in its petition for exemption the point at which the Rogers City Branch comes to a dead end as RCB milepost 11.5 and requested that the Board clarify the May 22, 2000 decision and notice and its subsequent decisions in this proceeding to reflect RCB milepost 12.7 as the correct end point of

the Rogers City Branch. By decision served on April 22, 2004, Lake State's request to clarify the Board's May 22, 2000 decision and notice and the subsequent decisions in this proceeding was granted and the decisions were modified to show that RCB milepost 12.7 is the end point of the Rogers City Branch.

By letter filed on May 3, 2004, MIDNR requests an additional 180-day extension of the NITU negotiating period. It states that MIDNR and Lake State are continuing negotiations towards an agreement and expect to complete an agreement within 180 days. By letter filed on May 3, 2004, Lake State indicates that it supports the extension request and states that it anticipates that a definitive agreement will be reached 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 to October 28, 2004.

This action 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 NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to October 28, 2004.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

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