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SERVICE DATE - DECEMBER 18, 2001

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: December 13, 2001

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 (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 negotiating period under the NITU was extended by decisions served on November 17, 2000, and May 4, 2001. The latest extension expired on November 13, 2001.

By facsimiles filed on December 11, 2001, Lake State and MIDNR request an additional 180-day extension of the negotiating period. The parties state that negotiations are continuing and an agreement is expected to be completed 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 November 13, 2001, or until May 12, 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. The requests of Lake State and MIDNR to extend the NITU negotiating period are granted.
2. The negotiating period under the NITU is extended for 180 days until May 12, 2002.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary