

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-364 (Sub-No. 11X)

MID-MICHIGAN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN KENT AND
MONTCALM COUNTIES, MI

Decided: January 25, 2008

By petition filed on November 27, 2007, Mid-Michigan Railroad, Inc. (MMRR or petitioner), sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 24.70-mile rail line located between milepost 103.20 in Lowell and milepost 78.50 in Greenville at the end of the line, in Kent and Montcalm Counties, MI. MMRR also requested an exemption from the offer of financial assistance requirements of 49 U.S.C. 10904. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (72 FR 71483-84) on December 17, 2007 (December 2007 notice), instituting an exemption proceeding.

Because petitioner believed that the proposed abandonment may generate comments, it requested that the Board adopt a procedural schedule in this proceeding to permit MMRR to file rebuttal to any reply received. Rather than address petitioner's request at that time, in the December 2007 notice, the Board set the due date of January 11, 2008, for comments and replies to be filed, and indicated that, once comments and replies in response to the petition were actually filed, MMRR could request leave to file rebuttal. In the December 2007 notice, the Board also stated that it would issue a final decision by March 14, 2008.

On January 11, 2008, the State of Michigan, Department of Transportation (MIDOT), filed comments and questioned the accuracy of the information provided in this proceeding. First, MIDOT alleges that the proposed abandonment is located in Ionia County, as well as in the Counties of Kent and Montcalm, which were listed in the petition. MIDOT also alleges that the shipper Crop Production Services (CPS) has been observed receiving rail traffic in 2007, in contradiction to MMRR's position in its petition that CPS has not used the line in 2007. MIDOT also states that the petition, when addressing alternative transportation available for potential shippers, references a non-existent state highway (M-591) and includes a map which incorrectly shows state highway M-91 extending south of Belding, and from which it is difficult to determine whether enough track remains in Lowell to serve the two active shippers there. Finally, MIDOT argues that the petition includes references to bridges located along the line proposed for abandonment in the proceeding under STB Docket No. AB-364 (Sub-No. 12X), rather than along the line at issue here, and notes that inclusion of these bridges in the financial analysis in this proceeding would render the analysis inaccurate.

Failure to provide an accurate list of affected counties constitutes failure to comply with the description requirements listed at 49 CFR 1152.11. Under 49 CFR 1104.10, the Board may reject a document submitted for filing if it finds that the document does not comply with the Board's rules. With this additional information from MIDOT, MMRR's petition will be considered not to be in compliance with Board rules. By omitting an affected county in its petition, MMRR has not provided the public with proper notice of its intention to abandon the line, eliminating the opportunity for the public in general, and residents of Ionia County in particular, to comment on or oppose the proposed abandonment. The omission also renders incomplete any environmental review of the proposed abandonment that the Board could have prepared. Therefore, the petition for exemption must be rejected. MMRR may refile a new petition, accompanied by a new filing fee, should it wish to have the Board consider a request to abandon this line.

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

It is ordered:

1. MMRR's petition for exemption is rejected.
2. This proceeding is discontinued.
3. This decision is effective on the date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary