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SERVICE DATE – LATE RELEASE APRIL 15, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 415 (Sub-No. 2X)

ESCANABA & LAKE SUPERIOR RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN ONTONAGON AND HOUGHTON COUNTIES, MICH.

Decided: April 14, 2011

By decision and notice of interim trail use or abandonment (NITU) served on September 27, 2010, the Board granted to Escanaba & Lake Superior Railroad Company (ELS) an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 42.93 miles of rail line between milepost 408.02 at Ontonagon and milepost 365.09 at Sidnaw, in Ontonagon and Houghton Counties, Mich.¹ Notice of the exemption was served and published in the Federal Register on April 27, 2010 (75 Fed. Reg. 22,174). Also, in response to a NITU request by the Michigan Department of Natural Resources and Environment (MDNRE), and in light of ELS's willingness to enter into trail use negotiations, the Board granted a 180-day negotiating period, which period expired on March 28, 2011.

By letter filed on March 25, 2011, MDNRE seeks an extension of the negotiating period for an additional 90 days. According to MDNRE, it and ELS are continuing negotiations and expect to complete a trail use agreement within 90 days. In a response filed on April 8, 2011, ELS consents to MDNRE's extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.² 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). Accordingly, the NITU negotiating period will be extended for an additional 90 days, until June 26, 2011.

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

¹ Two environmental conditions and a public use condition were also imposed in the September 27 decision. The public use condition expired on March 28, 2011.

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

It is ordered:

1. MDNRE's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended until June 26, 2011.
3. This decision is effective on the date of service.

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