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SERVICE DATE – NOVEMBER 24, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 308 (Sub-No. 4X)

CENTRAL MICHIGAN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
KENT COUNTY, MICH.

Decided: November 23, 2010

Central Michigan Railway Company (CMRY) filed a verified notice of exemption under 49 C.F.R. pt. 1152 Subpart F—Exempt Abandonments to abandon an approximately 1.75-mile line of railroad, consisting of the following three interconnected segments: (1) a line (segment A) extending from milepost 157.96 (at the switch connection with the east-west aligned tracks of the Mid-Michigan Railroad, Inc. (MMR) near the intersection of Taylor Avenue and Quimby Street) through valuation map marker 9+87.2 (the location of the south wye, or Press Track, switch adjacent to Monroe Avenue) and continuing to the end of the track at a point immediately north of Michigan Street/Bridge Street; (2) a line (segment B) extending from valuation map marker 3+00 (at a switch connection with a line of MMR immediately at the east end of the MMR bridge spanning the Grand River) to a connection with segment A at valuation map marker 9+87.2 (at the south wye switch); and (3) a line (segment C) extending from valuation map marker 0+00 (at a point of connection with the east-west aligned MMR line immediately to the east of the MMR line's bridge spanning the Grand River) due northward to valuation map marker 11+15.0 (approximately 250 feet south of Ann Street), in Grand Rapids, Kent County, Mich. Notice of the exemption was served and published in the Federal Register on April 1, 2009 (74 Fed. Reg. 14,862-63).

By decision and notice of interim trail use or abandonment (NITU) served on April 30, 2009, the proceeding was reopened and a 180-day period was authorized for the Michigan Department of Natural Resources (MDNR), to negotiate an interim trail use/rail banking agreement with CMRY for the right-of-way (ROW) involved in this proceeding pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). By decisions served on November 3, 2009, and May 10, 2010, the NITU negotiating period was extended until October 22, 2010.

On October 20, 2010, MDNR filed a request for a 180-day extension of the NITU negotiating period. MDNR states that CMRY and MDNR are continuing negotiations and expect to complete an agreement within 180 days. By letter filed on October 20, 2010, CMRY consents to MDNR's request to extend the NITU negotiating period.

On October 22, 2010, Tennine Corp. (Tennine) filed a notice of objection to the abandonment exemption. Tennine claims that it owns all of Lot 550 that underlies the ROW,

including that portion to the center line of vacated Walbridge Street, and the part of Lot 551 that underlies the ROW to a line approximately 185 feet north of the northern line of vacated Walbridge Street, in Kent Plat, Grand Rapids.¹ On October 28, 2010, CMRY replied to Tennine's filing. CMRY states that Tennine's objection is untimely. CMRY notes that a NITU has been issued, providing time for it to negotiate an interim trail use/rail banking arrangement with MDNR for the instant ROW and that the parties are working towards reaching a Trails Act agreement. CMRY also states that, because of the NITU, the property remains part of the national rail transportation system, subject to the Board's jurisdiction, and that any reversionary interest that Tennine or other property owners may have cannot vest until abandonment is consummated.

Under the Trails Act and the Board's implementing rules, if a prospective trail user requests a trail condition and the carrier indicates its willingness to negotiate a trail agreement, the Board's role under the Trails Act is largely ministerial. Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990). If the railroad indicates its willingness to negotiate, the Board must then issue a NITU. Id. 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.²

Here, MDNR and CMRY state that they are continuing negotiations and CMRY consents to the extension of time. Because the parties are continuing to negotiate and abandonment has not been consummated, a 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 180 days, until April 20, 2011. The fact that Tennine may have a reversionary property interest in the ROW does not prevent continued negotiations between MDNR and CMRY for an interim trail use/rail banking agreement because the property remains within the Board's jurisdiction for the duration of the negotiating period and any interim trail use/rail banking, assuming a Trails Act agreement is reached.

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

¹ It is unclear whether Tennine is objecting to the abandonment or conversion of the ROW for interim trail use/rail banking.

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

It is ordered:

1. MDNR's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until April 20, 2011.
3. This decision is effective on its service date.

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