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SERVICE DATE – AUGUST 26, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-506 (Sub-No. 1X)

SAULT STE. MARIE BRIDGE COMPANY—ABANDONMENT EXEMPTION—IN
DICKINSON COUNTY, MI

Decided: August 25, 2009

Sault Ste. Marie Bridge Company (SSMB) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 0.64-mile rail line between mileposts 29.60 and 30.24 in Iron Mountain, Dickinson County, MI. Notice of the exemption was served and published in the Federal Register on July 22, 2008 (73 FR 42651). The exemption was scheduled to become effective on August 21, 2008.

By decision and notice of interim trail use or abandonment (NITU) served on August 20, 2008, the proceeding was reopened and the exemption was made subject to interim trail use/rail banking and public use. A 180-day period was authorized to permit public use negotiations¹ and to permit the Michigan Department of Natural Resources (MDNR) to negotiate an interim trail use/rail banking agreement with SSMB for the described line. The negotiating period under the NITU was scheduled to expire on February 17, 2009. Also, in the same decision, the Board imposed four environmental conditions requiring SSMB to: (1) consult with the Michigan Department of Environmental Quality (DEQ), Remediation and Redevelopment Division, prior to the onset of any salvage activities regarding potential environmental contamination within the right-of-way of the proposed abandonment project area; (2) consult with DEQ, Land and Water Management Division (Upper Management District Office), prior to the onset of salvage activities, regarding the potential impact of the proposed abandonment activities on public trust fish and wildlife resources; (3) consult with DEQ (Crystal Falls Field Office), prior to the onset of salvage activities, regarding any reasonable regulatory requirements within its purview under the Clean Water Act; and (4) consult with the U.S. Fish and Wildlife Service, East Lansing Field Office, prior to the onset of salvage activities to determine any potential impacts that could occur to the Canada Lynx as a result of the proposed abandonment.

By decision served on February 26, 2009, the Board extended the NITU negotiating period to August 16, 2009. On August 14, 2009, MDNR filed a request to extend the NITU negotiating period for an additional 180 days. MDNR states that the parties are continuing negotiations and expect to complete an agreement within the 180-day period requested. On August 24, 2009, SSMB filed a letter stating that it agrees with the extension request.

¹ The 180-day public use negotiation period expired on February 17, 2009.

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 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). Accordingly, the NITU negotiating period will be extended until February 12, 2010.

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

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 February 12, 2010.
3. This decision is effective on its date of service.

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

Anne K. Quinlan
Acting Secretary

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