

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

CENTRAL MICHIGAN RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN
KENT COUNTY, MI

Decided: April 30, 2009

Central Michigan Railway Company (CMRY) filed a verified notice of exemption under 49 CFR 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, MI. The exemption is scheduled to become effective on May 1, 2009.

On April 17, 2009, the Michigan Department of Natural Resources (MDNR) filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, to enable it to negotiate with CMRY for interim trail use. MDNR has submitted a statement of willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By filing dated April 28, 2009, CMRY states that it is willing to negotiate for trail use.

Because MDNR’s request complies with the requirements of 49 CFR 1152.29 and CMRY is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CMRY may fully abandon the line subject to any outstanding conditions. See

49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 6, 2009. In the EA, SEA notes that CMRY served its historic report on the Michigan State Historic Preservation Officer (SHPO), pursuant to 49 CFR 1105.8(c), but that SEA has not heard from the SHPO. SEA, therefore, was not able to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing on the National Register of Historic Places (National Register). Accordingly, SEA initially recommended a condition that CMRY: (1) be required to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register (generally, 50 years or older) until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed; (2) report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties; and (3) not be allowed to file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

Comments to the EA were due by April 20, 2009. On April 8, 2009, CMRY submitted a letter from the SHPO dated March 24, 2009, in which the SHPO states that no historic properties will be affected by the proposed abandonment. Based on the information provided by the SHPO, SEA now recommends that no section 106 condition be imposed. Accordingly, no conditions will be imposed.

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

It is ordered:

1. This proceeding is reopened.
2. MDNR's request for issuance of a NITU is granted.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by October 27, 2009, interim trail use may be implemented. If no agreement is reached by that time, CMRY may fully abandon the line.

7. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary