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SERVICE DATE - MAY 12, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-227 (Sub-No. 10X)

WHEELING & LAKE ERIE RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN STARK COUNTY, OH

Decided: May 7, 1999

By decision and notice of interim trail use or abandonment (NITU) served on November 7, 1997, a 180-day period was authorized for the Stark County Park District to negotiate an interim trail use/rail banking agreement with Wheeling & Lake Erie Railway Company (W&LE) for W&LE's 5.65-mile line of railroad known as the Massillon Branch, extending from milepost 22.05 at Run Junction, near Navarre, OH, to the end of the track at milepost 16.40, near Massillon, OH, in Stark County, OH. The negotiating period under the NITU expired on May 21, 1998.

On November 4, 1998, the City of Massillon (the City), a new negotiating party, filed a request for issuance of a NITU for the entire line. The City submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way as a trail is subject to future reconstruction and reactivation of rail service as required under 49 CFR 1152.29. By letter dated November 5, 1998, W&LE stated that it had not consummated the abandonment and that it was willing to negotiate with the City for trail use. By decision served on November 6, 1998, a NITU was served, authorizing the City to negotiate an interim trail use/rail banking agreement with W&LE for a period of 180 days (until May 5, 1999).

On May 5, 1999, the City and W&LE filed a joint request to extend the NITU negotiating period for an additional 90 days. They state that W&LE has not consummated the abandonment and that they are close to concluding negotiations, but that the additional time is needed to finalize the agreement.

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.¹ Under the circumstances, further extension of the negotiating period is warranted and will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended for an additional 90 days from May 5, 1999.

¹ See Rail Abandonments-Supplemental Trails Act Procedures, 4 I.C.C.2d 152 (1987).

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

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to August 3, 1999.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary