

2312610

JAN 5 2012

ENTERED  
Office of Proceedings

LAW OFFICES OF  
**LOUIS E. GITOMER, LLC.**

JAN 05 2012

Part of  
Public Record

January 5, 2012

600 BALTIMORE AVENUE, SUITE 301  
TOWSON, MARYLAND 21204-4022  
(410) 296-2250 • (202) 466-6532  
FAX (410) 332-0885

LOUIS E. GITOMER  
Lou@lgraillaw.com

MELANIE B. YASBIN  
Melanie@lgraillaw.com  
410-296-2205

**FEE RECEIVED**  
JAN 5 - 2012  
**SURFACE  
TRANSPORTATION BOARD**

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

RE: Docket No. AB-565 (Sub-No. 17X), *New York Central Lines, LLC  
Abandonment Exemption - in Dutchess County, NY*

**FILED**

JAN 5 - 2012

**SURFACE  
TRANSPORTATION BOARD**

Dear Ms. Brown:

By decision and notice of interim trail use or abandonment ("NITU") served on October 15, 2004, the Surface Transportation Board (the "Board"), under 49 U.S.C. §10502, exempted from the prior approval requirements of 49 U.S.C. §10903 the abandonment by New York Central Lines, LLC ("NYC"), of approximately 4.7 miles of railroad line between milepost QCO 0.0 and milepost QCO 3.2 and between milepost QCK 29.5 and milepost QCK 31.0 (the "Line"), in the city and town of Poughkeepsie, Dutchess County, NY.

The Georgetown and High Line Railway Company, LLC ("GHL") requests a notice of interim trail use/rail banking over the a 3.2-mile portion of the Line between milepost QCO 0.0 and milepost QCO 3.2 in the city and town of Poughkeepsie, Dutchess County, NY. A map depicting the right-of-way-is attached.

By decision and NITU served on August 24, 2009, the Board accepted the late-filed request of Poughkeepsie-Highland Bridge Co., Inc., dba Walkway Over the Hudson, a 501(c)(3) non-profit New York corporation ("Walkway") for a NITU to negotiate with CSX Transportation, Inc. ("CSXT"), as successor to NYC, for trail use for a 0.5-mile portion of the Line between milepost QCK 29.5 and milepost QCK 30.0. Ownership of this 0.5-mile portion of the Line was successfully transferred to Walkway and the Board was advised that a trail use agreement had been reached in a filing dated September, 9, 2009.

By decision and NITU served on December 29, 2011 (the "*December 2011 Decision*"), the Board accepted the late-filed request of Walkway for a NITU to negotiate with CSXT for a 1.0-mile portion of the Line between milepost QCK 30.0 and QCK 31.0. In granting Walkway's request, the Board found there were legal or regulatory barriers to consummation of the abandonment and that the abandonment authority was still in effect. The *December 2011 Decision* held that if the parties did not implement an interim trail use agreement by June 26,

Ms. Cynthia T. Brown

January 5, 2012

Page 2

2012, CSXT could fully abandon the line segment, if there are no legal or regulatory barriers to consummation. GHL contends that the legal or regulatory barriers that existed at the time of the December 2011 decision still exist.

In *New York and Eastern Railway, LLC-Discontinuance Exemption-in Dutchess County, NY*, STB Docket No. AB-873X (STB served October 14, 2004), slip op. at 7, the Board granted an exemption for New York and Eastern Railway, LLC (“NYE”) and CSXT to discontinue service and for NYC to abandon the Line subject to the condition that NYC “consult with Fish and Wildlife Division, Region 5, New York Field Office, U.S. Army Corps of Engineers, New York District, New York State Department of Environmental Conservation, Division of Water, New York Department of State, Coastal Management Program, and Town of Poughkeepsie prior to initiation of salvaging or disposing of the entire right-of-way” (the “Condition”).

Neither CSXT nor NYE complied with the environmental conditions. Indeed as evidenced in a letter dated June 24, 2005, and filed with the Board, the New York Department of State (“NYDS”) required the completion of the NYDS Coastal Management Program Federal Consistency Assessment Form. CSXT never completed the form. Nor is there any evidence that CSXT consulted with the other parties. Since CSXT did not consult with the parties necessary to comply with the Condition. GHL contends that the Condition is a regulatory or legal barrier to consummation and that the consummation deadline will not occur until 60 days after CSXT complies with the Condition. Therefore, GHL contends that the abandonment authority is still in effect, that CSXT has not consummated the abandonment, and that the Line remains eligible for the issuance of a NITU.

GHl now requests the issuance of an Interim Trail Use Condition, over the 3.2-mile portion of the Line between milepost QCO 0.0 and milepost QCO 3.2, located in Dutchess County, NY. GHl understands that CSXT has not consummated the abandonment of the 3.2-mile portion of the Line.

A map depicting the right-of-way is attached.

In order to establish interim trail use and railbanking under 16 U.S.C. §1247(d), and 49 CFR §1152.29, GHl is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by and operated by CSX Transportation, Inc. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-565 (Sub-No. 17X).

Ms. Cynthia T. Brown  
January 5, 2012  
Page 3

GHL acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon CSX Transportation, Inc.

GHL is filing an original and 10 copies of this letter. A check for the filing fee of \$250 is enclosed.

Respectfully submitted,



Melanie B. Yasbin  
Attorney for Georgetown and High Line Railway  
Company, LLC

