

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-565 (Sub-No. 17X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—IN DUTCHESS
COUNTY, NY

Decided: October 2, 2009

By decision and notice of interim trail use or abandonment (NITU) served on October 15, 2004 (October 2004 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by New York and Eastern Railway, LLC, and CSX Transportation, Inc. (CSXT),¹ and 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, in the City and Town of Poughkeepsie, Dutchess County, NY. In the October 2004 decision, a 180-day period was authorized to permit Dutchess County (the County) to negotiate an interim trail use/rail banking agreement with NYC for the right-of-way (ROW) (October 2004 NITU). The negotiating period under the October 2004 NITU was extended several times, with the latest extension by decision served on March 23, 2009 (March 2009 decision), extending the NITU negotiating period until September 19, 2009. The March 2009 decision also extended the deadline for CSXT, as successor by merger to NYC,² to file a notice of consummation of the abandonment until November 18, 2009.

By decision and NITU served on August 26, 2009, a second NITU was implemented to permit Poughkeepsie-Highland Bridge Co., Inc., d/b/a Walkway Over the Hudson (Walkway) to negotiate an interim trail use/rail banking agreement with CSXT for a 0.5-mile portion of the 4.7-mile ROW between milepost QCK-29.5 and milepost QCK 30.0 (August 2009 NITU). In a letter filed on September 10, 2009, CSXT states that Walkway and CSXT have entered into a Purchase and Sale Agreement (PSA) for the 0.5-mile portion to be transferred to Walkway.

¹ The October 2004 decision embraced STB Docket No. AB-873X, New York and Eastern Railway, LLC—Discontinuance Exemption—in Dutchess County, NY, and STB Docket No. AB-55 (Sub-No. 652X), CSX Transportation, Inc.—Discontinuance Exemption—in Dutchess County, NY.

² See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (Sub-No. 94) (STB served Nov. 7, 2003) (authorizing consolidation of NYC within CSXT).

In the September 10, 2009 letter, CSXT also requests a 180-day extension of the NITU negotiating period for the remaining approximate 4.2 miles of the ROW from the October 2004 NITU, between milepost QCO 0.0 and milepost QCO 3.2 and between milepost QCK 30.0 and milepost QCK 31.0. CSXT states that it desires to continue to negotiate for interim trail use/rail banking with the County. In addition, CSXT requests an extension of time, until May 17, 2010, to exercise abandonment authority.³

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.⁴ Under the circumstances, 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). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Also, an extension of time to consummate the abandonment and to file a notice of consummation in this proceeding is justified. Accordingly, the NITU negotiating period for the remaining 4.2 miles of the ROW from the October 2004 NITU, between milepost QCO 0.0 and milepost QCO 3.2 and between milepost QCK 30.0 and milepost QCK 31.0, will be extended for an additional 180 days, from September 19, 2009, to March 18, 2010, and the consummation notice filing deadline will be extended to May 17, 2010. Given the time that has elapsed since abandonment was authorized, the parties are urged to conclude their negotiations so that further extensions will not be necessary.

By letter filed on September 29, 2009, and clarified on September 30, 2009, the New York State Office of Parks, Recreation and Historic Preservation (NYSP) and Walkway (collectively, petitioners), pursuant to 49 CFR 1152.29(f), request that the Board issue a NITU to substitute NYSP for Walkway as the trail user for the August 2009 NITU, covering the 0.5-mile segment between milepost QCK 29.5 and milepost QCK 30.0. Petitioners request expedited handling of their request to facilitate the opening of a new trail on October 3, 2009. Petitioners have submitted a copy of the extant NITU, NYSP's statement of willingness to assume financial responsibility for interim trail use and rail banking pursuant to the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29, and NYSP's acknowledgement that use of the ROW for trail purposes is subject to possible future reconstruction and reactivation for rail service. Petitioners have also indicated that the date of transfer of responsibility for the ROW will be October 2, 2009. Petitioners' submission meets the requirements of 49 CFR 1152.29(f). In a letter filed on September 29, 2009, CSXT reiterates that it has not consummated the abandonment of the 0.5-mile segment and states that it supports petitioners' request for expedited handling of the NITU request. CSXT also states that it consents to the assignment of the PSA, as

³ Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

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

amended, between CSXT and Walkway to NYSP so that NYSP can acquire the segment as a trail.

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. CSXT's request to extend the NITU negotiating period for the remaining 4.2-mile segment of the ROW from the October 2004 NITU, between milepost QCO 0.0 and milepost QCO 3.2 and between milepost QCK 30.0 and milepost QCK 31.0, is granted.
3. The NITU negotiating period for the 4.2-mile segment of the October 2004 NITU described above is extended to March 18, 2010.
4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before May 17, 2010.
5. The August 2009 NITU is vacated.
6. A replacement NITU applicable to NYSP as interim trail user is issued for the 0.5-mile segment of the ROW between milepost QCK 29.5 and milepost QCK 30.0, effective on the service date of this decision and notice, subject to any environmental conditions that remain in effect.
7. The new trail user is required 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 ROW.
8. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user's continuing to meet the financial obligations for the ROW.
9. If the new trail 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.

10. This decision and notice is effective on its service date.

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

Anne K. Quinlan
Acting Secretary