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SERVICE DATE – AUGUST 26, 2009

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: August 24, 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 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.¹ In the October 2004 decision, a 180-day period was authorized to permit public use negotiations² and to permit Dutchess County (the County) to negotiate an interim trail use/rail banking agreement with NYC for the right-of-way (ROW).³ The negotiating period under the NITU was extended several times, with the latest extension, served on March 23, 2009 (March 2009 decision), extending the NITU negotiating period until September 19, 2009.⁴

¹ The October 2004 decision also embraced New York and Eastern Railway, LLC—Discontinuance Exemption—in Dutchess County, NY, STB Docket No. AB-873X, and CSX Transportation, Inc.—Discontinuance Exemption—in Dutchess County, NY, STB Docket No. AB-55 (Sub-No. 652X), in which New York and Eastern Railway, LLC, and CSX Transportation, Inc. (CSXT), respectively, were granted exemptions to discontinue service over the line.

² The public use condition expired on April 13, 2005, and by statute may not be extended beyond the 180-day period.

³ The October 2004 decision also imposed several environmental conditions, which remain in effect.

⁴ The March 2009 decision also extended the deadline for CSXT, as successor by merger to NYC, to file a notice of consummation of the abandonment from May 22, 2009, until November 18, 2009.

On June 30, 2009, Poughkeepsie-Highland Bridge Co., Inc., d/b/a Walkway Over the Hudson (Walkway) late filed a request for issuance of a NITU⁵ pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29 for a 0.5-mile portion of the line between milepost QCK-29.5 and milepost QCK-30.0. Walkway is a non-profit New York corporation that owns and controls the former rail corridor and former railroad bridge across the Hudson River which abuts the western end of the line. Walkway states that it is in the process of transforming the bridge and its approaches into a linear park and trail with completion scheduled to be in early October. Walkway anticipates that CSXT and the County will not consummate an agreement in time to accommodate the October opening of the park and trail and, therefore, Walkway requests that its NITU for the 0.5-mile portion of the line run concurrent with the County's NITU negotiating period of September 19, 2009. Walkway has submitted a statement of willingness to assume 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 the payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 CFR 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. In a response filed on July 7, 2009, CSXT states that CSXT and the County have been unable to finalize an agreement for interim trail use/rail banking, and that CSXT wishes to keep its options open and is willing to negotiate with Walkway for interim trail use for the 0.5-mile portion of the line.

Because Walkway's request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued to Walkway for the 0.5 portion of the line between milepost QCK-29.5 and milepost QCK-30.0 that will run concurrent with the County's NITU negotiating period, expiring September 19, 2009. The parties may negotiate an agreement during this period. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached for this portion by September 19, 2009, CSXT may fully abandon that portion, subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Under the Trails Act, use of the ROW for trail purposes is subject to future use of the property for restoration of railroad operations.

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

⁵ The notice that was served and published in the Federal Register on July 19, 2004 (69 FR 43054), provided that requests for trail use/rail banking had to be filed by August 9, 2004. Because there is no indication that Walkway's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Stark County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

It is ordered:

1. This proceeding is reopened.
2. Walkway's late-filed request for a NITU under 16 U.S.C. 1247(d) is accepted.
3. Upon reconsideration, the October 2004 decision, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit Walkway to negotiate with CSXT for trail use for a 0.5-mile portion of the line between milepost QCK-29.5 and milepost QCK-30.0, that will run concurrent with the negotiating period of the County, until September 19, 2009.
4. If an interim trail use/rail banking agreement is reached on the portion of the line between milepost QCK-29.5 and milepost QCK-30.0, 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 ROW.
5. 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 ROW.
6. If interim trail use is implemented on the portion of the line between milepost QCK-29.5 and milepost QCK-30.0, 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.
7. If an agreement for interim trail use/rail banking for the portion of the line between milepost QCK-29.5 and milepost QCK-30.0 is reached by September 19, 2009, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon that portion provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).
8. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary