

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-565 (Sub-No. 7X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—
IN SUFFOLK COUNTY, MA

Decided: June 10, 2008

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152.50 Subpart F—Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 2.17 miles of railroad between milepost QBG-5.7 and milepost QBG-7.87 in Chelsea, Suffolk County, MA. Notice of the exemption was served and published in the Federal Register on March 29, 2002 (67 FR 15281).¹

By decision and notice of interim trail use or abandonment (NITU) was served April 29, 2002, the proceeding was reopened and a 180-day period was authorized for the City of Chelsea, MA (City), to negotiate an interim trail use/rail banking agreement with NYC for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).² At the request of CSXT, successor by merger to NYC, the negotiation period under the NIU was extended several times; the latest decision, served on November 14, 2007, extended the negotiation period until April 12, 2008. The November 14, 2007 decision also extended the deadline for CSXT to file its notice of consummation until June 11, 2008.

On June 5, 2008, the Georgetown and High Line Railway Company, LLC (G&H), a new negotiation party, filed a statement of willingness to assume financial responsibility (SWAFR) in order to establish interim trail use and rail banking pursuant to the Trails Act with respect to the 2.17-mile rail line. G&H also acknowledged that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Also on June 5, 2008, CSXT replied, stating that it has not consummated the abandonment, and is willing to negotiate with G&H for a 180-day period from G&H's June 5, 2008 filing of the SWAFR.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way and the carrier is willing to enter into negotiations. Where, as here, the

¹ The notice issued on March 29, 2002, embraced STB Docket No. AB-55 (Sub-No. 605X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Suffolk County, MA.

² The April 29, 2002 decision also imposed environmental conditions.

carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to negotiate with G&H for trail use over the right-of-way, the Board retains jurisdiction and the NITU negotiating period may be extended or a new negotiating period may be established. The period for the City to negotiate trail use with CSXT has expired without an agreement and the City has not sought an extension. Under the circumstances, authorization of a 180-day negotiation period (here in the form of a new period) is warranted for G&H to have an opportunity to negotiate with CSXT. 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). Accordingly, the request will be granted and a new negotiation period, extending until December 2, 2008, will be authorized. As a result, the abandonment consummation deadline will be extended automatically until 60 days after the satisfaction, expiration or removal of this trail use condition and any pending environmental condition that presently serves as a barrier to consummation.

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. A NITU designating G&H as the interim trail use negotiating party is issued for a period of 180 days from June 5, 2008 (until December 2, 2008), subject to the environmental conditions that remain in effect.
3. If a trail use agreement is reached, the 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 right-of-way.
4. 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 right-of-way.
5. If a trail use agreement is reached and the 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.

6. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary