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SERVICE DATE - MARCH 29, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 2X)

NEW YORK CENTRAL LINES, LLC–ABANDONMENT  
EXEMPTION–IN MIDDLESEX COUNTY, MA

Decided: March 28, 2005

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively, applicants) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 4.17 miles of railroad between milepost QBH-2.60 near Sherborn and milepost QBH-6.77 near Holliston, in Middlesex County, MA. Notice of the exemption was served and published in the Federal Register on August 2, 2001 (66 FR 40314-15). On August 31, 2001, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the Town of Sherborn (Sherborn) and the Town of Holliston (Holliston) to negotiate an interim trail use/rail banking agreement with applicants for the right-of-way in this proceeding. At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension decision, served on September 9, 2004, extended the negotiation period until February 27, 2005. The September 9, 2004 decision also extended the deadline for CSXT to file its notice of consummation until April 28, 2005.

On March 23, 2005, CSXT filed a request to extend the NITU negotiation period until August 26, 2005. CSXT states that the parties have been unable to finalize negotiations but desire to continue negotiations for the acquisition of the right-of-way. Additionally, CSXT requests an extension of the consummation notice filing deadline until October 25, 2005.<sup>1</sup>

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an 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 64, 659 (8th Cir. 1996) cert. denied, 519 U.S. 1149 (1997).

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<sup>1</sup> 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.

Accordingly, the NITU negotiating period will be extended to August 26, 2005, and the consummation notice filing deadline will be extended to October 25, 2005.

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

It is ordered:

1. CSXT's request to extend the NITU negotiating period and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended to August 26, 2005.
3. The authority to abandon must be exercised on or before October 25, 2005.
4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary