

36345
DO

SERVICE DATE – OCTOBER 27, 2005

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: October 25, 2005

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.³ By decision served on June 14, 2005, the NITU negotiating period was extended for 180 days from April 13, 2005, until October 10, 2005. In addition, the deadline for filing a notice of consummation of the abandonment was extended from October 15, 2005, until December 14, 2005.

By letter filed on October 17, 2005, CSXT, as successor by merger to NYC, filed a request to extend the NITU negotiating period for 180 days from October 10, 2005, until April 8, 2006. CSXT states that it has not consummated the abandonment, has been unable to finalize negotiations with the County, and desires to continue to negotiate for interim trail use/rail banking with the County. Additionally, CSXT requests an extension of time to exercise the abandonment authority to June 7, 2006.⁴

¹ The October 2004 decision also 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, 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.

³ The October 2004 decision also imposed several environmental conditions.

⁴ 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.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.⁵ 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 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of the consummation deadline is also justified. Accordingly, the NITU negotiating period will be extended to April 8, 2006, and the consummation notice filing deadline will be extended to June 7, 2006.

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 negotiating period under the NITU and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended to April 8, 2006.
3. The authority to abandon must be exercised on or before June 7, 2006.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

⁵ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).