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SERVICE DATE - NOVEMBER 22, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 8X)

NEW YORK CENTRAL LINES, LLC-ABANDONMENT
EXEMPTION IN DELAWARE COUNTY, OH

Decided: November 21, 2002

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 1.5 miles of railroad from milepost QED 114.1 to milepost QED 115.6 in Delaware County, OH. Notice of the exemption was served and published in the Federal Register on April 12, 2002 (67 FR 18053-54). On May 23, 2002, a decision and notice of interim trail use or abandonment (NITU) was served, that reopened the proceeding and authorized a 180-day period for the City of Delaware (City) to negotiate an interim trail use/rail banking agreement with applicants for the right-of-way involved in this proceeding. The negotiating period under the NITU was scheduled to expire on November 19, 2002.¹

By letter filed on November 20, 2002 (a facsimile was filed on November 19, 2002), CSXT requests an additional 3-month extension of the negotiation period until February 20, 2003. CSXT states that the parties were unable to finalize the transaction by November 19, 2002.

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. 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). Accordingly, the NITU negotiating period will be extended to February 20, 2003.

¹ The May 23 decision also imposed a 180-day public use condition that expired on November 10, 2002, and the exemption was made subject to environmental and historic preservation conditions.

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

It is ordered:

1. The negotiating period under the NITU is extended to February 20, 2003.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary