

41897
DO

SERVICE DATE – LATE RELEASE OCTOBER 24, 2011

SURFACE TRANSPORTATION BOARD

DECISION

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

NEW YORK CENTRAL LINES, LLC—ABANDONMENT
EXEMPTION—IN MIDDLESEX COUNTY, MASS.

Decided: October 24, 2011

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively, applicants) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service for NYC to abandon and for 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, Mass. 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 applicants, the negotiation period under the NITU was extended several times; the latest extension, served on August 20, 2010, extended the negotiation period until August 22, 2011. The August 20, 2010 decision also extended the deadline for CSXT to file its notice of consummation until October 21, 2011.

By letter filed on September 13, 2011, Sherborn and Holliston requested an extension of the negotiation period under the NITU for 1 year, until August 22, 2012, to allow completion of the negotiating process among CSXT and the towns of Holliston and Sherborn for trail use. On September 14, 2011, CSXT, as successor by merger to NYC, filed its response, stating that it concurs with an extension until August 22, 2012, and desires to continue to negotiate interim trail use/rail banking with Sherborn and Holliston.¹

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances, further extension of the negotiating period is warranted.

¹ CSXT notes that, under 49 C.F.R. § 1152.29(e)(2), the requested extension of the NITU negotiating period creates a regulatory barrier to consummation of the abandonment. For that reason, if the NITU negotiating period expires without the parties having reached an agreement, CSXT's notice of consummation will be due not later than 60 days thereafter, October 22, 2012.

² See Rail Abans.—Use-of-Rights-of-Way as Trails Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails Systems Act, 16 U.S.C. § 1247(d). Accordingly, the NITU negotiating period will be extended to August 22, 2012.³

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

It is ordered:

1. The request of Sherborn and Holliston to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to August 22, 2012.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ Although the request exceeds the customary request of 180 days, the Board has granted such request in the past. See, e.g., S. Pac Transp. Co.-Aban. Exemption-Wendel-Alturas Line in Modoc & Lassen Counties, Cal., Docket No. AB 12 (Sub-No. 184X) (STB served Sept. 1, 2005).