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SERVICE DATE – JULY 19, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 10X)

NEW YORK CENTRAL LINES, LLC-ABANDONMENT
EXEMPTION-IN WORCESTER COUNTY, MA

Decided: July 18, 2006

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 4.2 miles of railroad between milepost QBU-00 and milepost QBU-4.2 from Fitchburg to Leominster, in Worcester County, MA. Notice of the exemption was served and published in the Federal Register on May 30, 2002 (67 FR 37911).¹ On June 28, 2002, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the Cities of Leominster and Fitchburg (Cities) to negotiate an interim trail use/rail banking agreement with applicants for the entire line. At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension granted by decision served January 23, 2006, extended the negotiating deadline until July 17, 2006. The January 23 decision also extended the deadline for CSXT to file its notice of consummation until September 15, 2006.

On July 17, 2006, CSXT filed a request for an extension of the NITU negotiating period until January 14, 2007, stating that the applicants have not consummated the abandonment and have been unable to finalize negotiations but desire to continue negotiations for interim trail use/rail banking with the Cities. Additionally, CSXT requested an extension of the consummation notice filing deadline until March 15, 2007.

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 requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further 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). Accordingly, the NITU negotiation period will be

¹ The notice issued May 30, 2002, embraced STB Docket No. AB-55 (Sub-No. 616X), CSX Transportation, Inc.-Discontinuance of Service Exemption-in Worcester County, MA.

extended to January 14, 2007,² and the consummation notice filing deadline will be extended to March 15, 2007.³

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 for an extension of the NITU negotiating period and its request for an extension of time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended to January 14, 2007.
3. The authority to abandon must be exercised on or before March 15, 2007.
4. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary

² Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., CSX Transportation, Inc.—Abandonment Exemption—Jefferson County, AL, STB Docket No. AB-55 (Sub-No. 613X) (STB served Oct. 22, 2004).

³ 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.