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SERVICE DATE - JANUARY 30, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-565 (Sub-No. 11X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—
IN LAKE COUNTY, OH

STB Docket No. AB-55 (Sub-No. 617X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—
IN LAKE COUNTY, OH

Decided: January 28, 2004

By decision and notice of interim trail use or abandonment (NITU) served on January 31, 2003 (January 2003 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, and the discontinuance of service by CSX Transportation, Inc. (CSXT) over, a 2.56-mile line of railroad in the Western Region, Great Lakes Division, Chicago Line Subdivision, extending from the former B&O Valuation Station 2535+40 to the end of the track at former Conrail Valuation Station 45+01, between Painesville and Grand River, in Lake County, OH, subject to trail use, public use, environmental, and standard employee protective conditions. The January 2003 decision authorized Lake Metroparks to negotiate with NYC and CSXT for interim trail use/rail banking for the 2.56-mile line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The NITU negotiating period expired on July 30, 2003. The January 2003 decision also stated that, if consummation had not been effected by the filing of a notice of consummation by January 31, 2004, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

On January 20, 2004, NYC and CSXT filed requests for an additional 6-month NITU negotiating period, and to extend the consummation deadline until July 30, 2004. They state that Lake Metroparks still has a continuing interest in trail negotiations and indicate by their filing that abandonment has not been consummated.

Where, as here, carriers have not consummated the abandonment at the end of the previously imposed negotiating period and are willing to continue trail use negotiations, the Board retains

jurisdiction and the NITU negotiating period may be extended.¹ 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). Because an extension of the consummation notice filing deadline and the additional 6-month NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act, and the rail carriers have indicated their willingness to continue negotiations, the requested extensions will be granted. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990). Accordingly, the NITU negotiating period and the consummation notice filing deadline will be extended until July 30, 2004.

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

It is ordered:

1. The requests by NYC and CSXT for an additional 6-month NITU negotiating period and for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended until July 30, 2004.
3. The authority to abandon must be exercised on or before July 30, 2004.
4. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary

¹ See Rail Abandonments – Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).