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SERVICE DATE - OCTOBER 12, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-565 (Sub-No. 1X)

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

STB Docket No. AB-55 (Sub-No. 593X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN  
MIDDLESEX COUNTY, MA

Decided: October 11, 2001

In a petition filed on June 25, 2001,<sup>1</sup> New York Central Lines, LLC (NYC), and CSX Transportation, Inc. (CSXT) (collectively, petitioners), seek exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for NYC to abandon, and CSXT to discontinue service over, a 4.80-mile portion of a line of railroad known as the Albany Division, Fitchburg Subdivision, extending from milepost QBS 0.00 at Framingham to milepost QBS 4.80 at South Sudbury, in Middlesex County, MA.<sup>2</sup> The Town of Framingham requests issuance of a public use condition. The Town of Sudbury also requests issuance of a public use condition and a notice of interim trail use (NITU) for the 1.4-mile portion of the line that extends north from the Framingham town line to the intersection of the former Penn Central Transportation Company (Penn Central) line. We will grant the exemption, subject to trail use, public use, and standard employee protective conditions.

BACKGROUND

Petitioners state that the only shipper on the line, North Pacific Group, Inc. (North Pacific), has closed its distribution yard located in Sudbury, MA. Prior to the closure of the

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on July 13, 2001 (66 FR 36831-32).

<sup>2</sup> CSX Corporation, CSXT's parent company, and Norfolk Southern Corporation jointly acquired control of Conrail Inc. and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail have been assigned to NYC, a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line to be abandoned is included among the property being operated by CSXT pursuant to the NYC operating agreement.

distribution yard, the principal commodities transported over the line were plywood and particleboard. As indicated in a letter attached to the petition, North Pacific does not oppose abandonment of the line because it is opening a replacement site in the same region that will offer improved logistics for service to its customers. There is apparently no prospect for future rail traffic on the line.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving petitioners of the burdens associated with ownership and maintenance of a line that is no longer used and by allowing petitioners to apply their assets more productively elsewhere [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power because the one former shipper no longer requires rail service at this location and does not object to the proposed abandonment and discontinuance of service.<sup>3</sup> Nevertheless, to ensure that this shipper is informed of our decision, we will require petitioners to serve a copy of this decision and notice on North Pacific within 5 days of the service date and to certify to us that they have done so.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

Petitioners have submitted an environmental report with their petition and have notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report,

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<sup>3</sup> Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on August 24, 2001, requesting comments by September 24, 2001, and recommending that no environmental or historic conditions be imposed on the abandonment.

No comments to the EA were filed by the comment due date. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As noted, the Town of Sudbury requests interim trail use/rail banking under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), on 1.4 miles of the line. In its request, filed on August 2, 2001, it has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29.

SEA has indicated in its EA that the right-of-way may be suitable for other public use under 49 U.S.C. 10905. As noted, the Towns of Sudbury and Framingham, by letters filed on July 26, 2001, and August 2, 2001, respectively, request that a 180-day public use condition be imposed over the entire 4.80 miles of the line, precluding petitioners from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and from removing or destroying potential trail-related structures, such as bridges, trestles, culverts and tunnels. The Town of Sudbury submits that the rail corridor has been identified as providing both recreational opportunities as a trail and the potential for a roadway bypass for Route 20, located at the north end of the line. The Town of Framingham submits that the railroad right-of-way is the location of a proposed greenway and trail that would link several existing and proposed regional trails, parks, schools, residential neighborhoods, historic districts, and commercial properties. The 180-day time period is requested to provide both towns with an opportunity to complete a trail plan and commence negotiations with petitioners, who are willing to negotiate for trail use.

The Town of Sudbury's request for a NITU for the 1.4-mile segment of the line complies with the requirements of 49 CFR 1152.29 and petitioners are willing to enter into negotiations. Therefore, we will issue a NITU for the 1.4-mile line segment described above. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, petitioners may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to

impose them concurrently, subject to the execution of a trail use agreement. The Towns of Sudbury and Framingham have met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed, commencing from the effective date of this decision and notice. We note that a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, petitioners are not required to deal exclusively with the Towns of Sudbury or Framingham, but may engage in negotiations with other interested persons.

The parties should note that the operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903, the abandonment by NYC and discontinuance of service by CSXT of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), the terms and conditions for implementing interim trail use/rail banking set forth below, and the condition that petitioners shall leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (but not track and track materials), for a period of 180 days from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use.

2. Petitioners are directed to serve a copy of this decision and notice on North Pacific within 5 days after the service date of this decision and notice and certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached as to the 1.4-mile portion of the right-of-way that extends north from the Framingham town line to the intersection of the

former Penn Central line, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, petitioners may fully abandon and discontinue service over the line.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroads and the Board by October 22, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

8. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

9. Provided no OFA has been received, this exemption will be effective on November 11, 2001. Petitions to stay must be filed by October 29, 2001, and petitions to reopen must be filed by November 6, 2001.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), petitioners shall file a notice of consummation with the Board to signify that they have exercised the authority granted and fully abandoned the line. If consummation has not been effected by petitioners' filing of a notice of consummation by October 12, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

STB Docket No. AB-565 (Sub-No. 1X) et al.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary