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SERVICE DATE – DECEMBER 12, 2006

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: December 11, 2006

By decision and notice of interim trail use or abandonment (NITU) served on October 12, 2001 (October 2001 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 4.80 miles 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, subject to trail use, public use, and standard employee protective conditions.¹ The October 2001 decision authorized the Town of Sudbury (Sudbury) to negotiate with the carrier for interim trail use/rail banking 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 line. The NITU negotiating period was extended through September 29, 2006, by decisions served on April 10, 2002, October 7, 2002, May 15, 2003, October 6, 2003, May 4, 2004, October 28, 2004, April 18, 2005, November 8, 2005, and May 26, 2006. The October 2001 decision also stated that, if consummation has not been effected by the filing of a notice of consummation by October 12, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. By decisions served on November 8, 2005, and May 26, 2006, the consummation date was extended until November 28, 2006.²

¹ Certain of the prior decisions or notices in this proceeding have embraced the related STB Docket No. AB-55 (Sub-No. 593X), CSX Transportation, Inc.—Discontinuance of Service Exemption—In Middlesex County, MA. CSX Corporation, CSX Transportation, Inc.'s (CSXT) 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 were assigned to NYC, a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line authorized for abandonment in this proceeding is included among the property operated by CSXT pursuant to the NYC operating agreement. CSXT is the successor to NYC. See CSX Corp. et al.—Control—Conrail Inc. et al., STB Finance Docket No. 33388 (Sub-No. 94) (Supplemental Transaction) (STB served Nov. 7, 2003).

² The pendency of conditions, including trail use conditions, serves to extend the deadline for consummation of the abandonment until 60 days after the expiration, satisfaction, or removal of the legal or regulatory barrier to consummation.

By letter filed on October 26, 2006, CSXT requests an extension of the NITU negotiating period until May 24, 2007.³ CSXT states that it has not consummated the abandonment, has been unable to finalize negotiations with Sudbury, desires to continue to negotiate for interim trail use/rail banking with Sudbury, and seeks the extension of time to negotiate trail use. CSXT also seeks an extension of the consummation date until July 23, 2007, for the entire 4.80-mile line.⁴

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, 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). Because an extension of the consummation notice filing deadline and the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d), the requested extensions will be granted. Accordingly, the NITU negotiating period will be extended until May 24, 2007, and the consummation notice filing deadline will be extended until July 23, 2007.

By request filed on October 23, 2006, the Town of Framingham (Framingham) sought issuance of a NITU, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for a 3.40-mile portion of the right-of-way that extends from milepost QBS 0.00 at Framingham to milepost QBS 3.40 at the Framingham town line. Framingham submitted a statement indicating its willingness to assume full responsibility for management of, for 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 payment of any and all taxes that may be levied or assessed against the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. CSXT's October 26 letter states that it is willing to negotiate with Framingham for interim trail use. CSXT further requests that the NITU negotiating period for CSXT and Framingham be granted through May 24, 2007.

³ Although the request exceeds the customary request of 180 days, it will correspond to the time period allotted to the Town of Framingham to negotiate its trail use request discussed below and the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

⁴ 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.

A trail use request may be accepted as long as the Board retains jurisdiction over the involved railroad right-of-way⁵ and the carrier is willing to enter into negotiations. Inasmuch as CSXT has not consummated the abandonment and is willing to negotiate with Framingham for trail use over the requested portion of the right-of-way, a NITU will be issued for that portion of the right-of-way from milepost QBS 0.00 at Framingham to milepost QBS 3.40 at the Framingham town line, with the trail use negotiating period extending until May 24, 2007. If no agreement is reached within that time period, CSXT may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the decision served October 12, 2001, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below until May 24, 2007, to permit Framingham to negotiate with CSXT for trail use of the 3.40-mile portion of the right-of-way from milepost QBS 0.00 at Framingham to milepost QBS 3.40 at the Framingham town line.
3. CSXT's requests to extend the NITU negotiating period for the 1.4-mile line segment described above, and to extend the time to exercise the abandonment authority for the 4.80 miles that were the subject of the exemption in the October 2001 decision are granted.
4. The negotiating period for the 1.4-mile line segment under the NITU is extended until May 24, 2007.
5. The authority to abandon must be exercised on or before July 23, 2007.
6. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for 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.

⁵ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company—Exemption—Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri—Kansas—Texas Railroad Company—Abandonment—In Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

7. 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.

8. 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.

9. If an agreement for interim trail use/rail banking is reached by May 24, 2007, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, subject to the conditions imposed in the October 2001. See 49 CFR 1152.29(d)(1).

10. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary