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SERVICE DATE – FEBRUARY 7, 2005

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: February 4, 2005

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 was extended by decisions served December 24, 2002, June 19, 2003, March 24, 2004, and July 27, 2004, with the latest extension expiring on January 23, 2005. The July 27, 2004 decision also extended the deadline for CSXT to file its notice of consummation until October 30, 2004.

On January 26, 2005, CSXT filed a request for an extension of the NITU negotiating period until July 22, 2005, stating that the applicants have not consummated the abandonment and have been unable to finalize negotiations with the Cities. Additionally, CSXT requests an extension of the consummation notice filing deadline until September 19, 2005.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. 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). Accordingly, the NITU negotiation

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.

period will be extended to July 22, 2005, and the consummation notice filing deadline will be extended to September 19, 2005.

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 negotiating period and its request for an extension of time to exercise the abandonment authority is granted.
2. The negotiating period under the NITU is extended to July 22, 2005.
3. The authority to abandon must be exercised on or before September 19, 2005.
4. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary