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SERVICE DATE – APRIL 29, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 7X)

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

Decided: April 26, 2002

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) 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 2.17 miles of railroad between milepost QBG 5.7 and milepost QBG 7.87 in Chelsea, Suffolk County, MA. Notice of the exemption was served and published in the Federal Register on March 29, 2002 (66 FR 15281).¹ The exemption is scheduled to become effective on April 30, 2002.

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on April 5, 2002. In the EA, SEA states that the U.S. Army Corps of Engineers, New England District (Corps), has submitted comments stating that the proposed abandonment may involve activities that would require Corps permits. Therefore, SEA recommends that a condition be imposed requiring NYC to consult with the Corps and obtain all applicable permits prior to conducting any salvage activities.

SEA also states that the Commonwealth of Massachusetts Office of Coastal Zone Management (CZM) has indicated that it needs additional time to evaluate the proposed abandonment and to determine whether the abandonment would affect a coastal management area. Therefore, SEA recommends that NYC consult with CZM prior to conducting any salvage activities to determine whether the abandonment would affect coastal management areas and whether Massachusetts Coastal Management consistency certification is required. Additionally, SEA recommended that, if consistency certification is required, NYC should be prohibited from performing any salvage or abandonment activities until it obtains a consistency certification and NYC should then notify the Board.

¹ While the notice embraced STB Docket No. AB-55 (Sub-No. 605X), CSX Transportation, Inc.–Discontinuance of Service Exemption–in Suffolk County, MA, the environmental conditions discussed in this decision are imposed on the proposed abandonment.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment. By facsimile received on April 10, 2002, and filed on April 22, 2002, the City of Chelsea, MA (City), late-filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with NYC for acquisition of the right-of-way for use as a recreational trail.² The City requests that NYC be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that NYC be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. The City states that the time period is needed in order to complete negotiations with NYC. The City submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (if the user is immune from liability, 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. On April 22, 2002, NYC indicated its willingness to negotiate with the City for interim trail use and its agreement with imposition of a public use condition.

Because ITC's request complies with the requirements of 49 CFR 1152.29 and NYC is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, NYC 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.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate

² The March 29 notice provided that trail use/rail banking requests had to be filed by October 4, 2001. In revising its abandonment rules in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that ITC's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). The City has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, NYC must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, 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 the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, NYC is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

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 exemption of the abandonment of the line described above is subject to the conditions that NYC: (1) consult with the Corps and obtain all applicable Corps permits prior to conducting salvage activities; and (2) consult with the CZM and if it is determined that a consistency certification is required, NYC shall be prohibited from performing any salvage or abandonment activities until it obtains the consistency certification and NYC shall then notify the Board.
3. The notice served and published in the Federal Register on March 29, 2002, 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, subject to the conditions that NYC keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels, for a period of 180 days after the April 30, 2002 effective date (until October 27, 2002), to enable any state or local government agency, or other interested person to negotiate

the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line.

4. 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 (if the user is immune from liability, 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. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.

6. 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.

7. If an agreement for interim trail use/rail banking is reached by October 27, 2002, interim trail use may be implemented. If no agreement is reached by that time, NYC may fully abandon the line.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary