

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: July 23, 2007

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 May 24, 2007, 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, May 26, 2006, and December 12, 2006. The decision served on December 12, 2006, also authorized the Town of Framingham to negotiate with the carrier for interim trail use/rail banking for the 3.4-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 line).

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).

By letter filed on July 3, 2007, Sudbury requests a 180-day extension of the NITU negotiating period until November 20, 2007.² Sudbury states that the parties are continuing to negotiate for interim trail use/rail banking, and that it is in the process of obtaining its own appraisal of the relevant line segment. By letter filed on July 12, 2007, CSXT concurs in the extension request.

Additionally, in the July 12, 2007 letter, CSXT states that it has not consummated the abandonment of the Framingham line and requests a 180-day extension of the NITU negotiating period until November 20, 2007, for that 3.4-mile portion of the line. CSXT states that it has not reached an agreement with Framingham but desires to continue to negotiate.

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.³ 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). Accordingly, the NITU negotiating period will be extended for an additional 180 days, until November 20, 2007. Given the length of time the parties have had to negotiate a trail use agreement, however, the negotiation parties are urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. The requests to extend the NITU negotiating period are granted.
2. The NITU negotiating period is extended until November 20, 2007, for CSXT to negotiate (a) with Sudbury as to the 1.4-mile portion of the line between milepost QBS 3.40 and milepost QBS 4.80; and (b) with Framingham as to the 3.4-mile portion of the line between milepost QBS 0.00 and milepost QBS 3.40.

² Sudbury states in its extension request that the 1.4-mile portion of the line extends from milepost QBS 3.40 to milepost QBS 4.90. The correct mileposts are from milepost QBS 3.40 to milepost QBS 4.80, which makes the length of the line portion approximately 1.4 miles.

³ See Rail Abandonments—Supplemental Trails Act Procedures, 49 I.C.C. 2d 152, 157-58 (1987).

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

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

Vernon A. Williams
Secretary