

SERVICE DATE – JULY 30, 2007

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: July 26, 2007

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).<sup>1</sup> 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 several times; the latest extension, granted by decision served January 25, 2007, extended the negotiation deadline until July 13, 2007. The January 25 decision also extended the deadline for CSXT to file its notice of consummation until September 11, 2007.

On July 18, 2007, CSXT filed a request for an extension of the NITU negotiating period until January 9, 2008, stating that the applicants have not consummated the abandonment and have been unable to finalize negotiations with the Cities. CSXT also states that the even though the trail use negotiations have been ongoing for some time, the Trust for Public Land, is now involved as intermediary, and that at the last meeting it was agreed that the Cities would order a new appraisal in conformance with generally accepted appraisal methodology. Additionally, CSXT requests an extension of the consummation notice filing deadline until March 10, 2008.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use 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). Accordingly, the NITU negotiation period will be extended to January 9, 2008,

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<sup>1</sup> 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.

and the consummation notice filing deadline will be extended to March 10, 2008. Given the time that has elapsed since abandonment authority was granted, however, the parties are urged to conclude their negotiations so that further extensions are not necessary.

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 are granted.
2. The negotiating period under the NITU is extended to January 9, 2008.
3. The authority to abandon must be exercised on or before March 10, 2008.
4. This decision is effective on its date of service.

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

Vernon A. Williams  
Secretary