

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 17X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—IN DUTCHESS
COUNTY, NY

Decided: April 2, 2010

By decision and notice of interim trail use or abandonment (NITU) served on October 15, 2004 (October 2004 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by New York and Eastern Railway, LLC, and CSX Transportation, Inc. (CSXT),¹ and the abandonment by New York Central Lines, LLC (NYC), of approximately 4.7 miles of railroad line between milepost QCO 0.0 and milepost QCO 3.2 and between milepost QCK 29.5 and milepost QCK 31.0, in the City and Town of Poughkeepsie, Dutchess County, NY. The October 2004 decision also authorized a 180-day period for Dutchess County (the County) to negotiate an interim trail use/rail banking agreement with NYC for the right-of-way (ROW) (October 2004 NITU), and imposed several environmental conditions, which remain in effect.² The negotiating period under the October 2004 NITU was extended several times. By decision served on October 2, 2009 (October 2009 decision), the NITU negotiating period was extended for the approximately 4.2-mile segment of the ROW between milepost QCO 0.0 and milepost QCO 3.2 and between milepost QCK 30.0 and milepost QCK 31.0, until March 18, 2010 (4.2-mile segment).³ The

¹ The October 2004 decision embraced STB Docket No. AB-873X, New York and Eastern Railway, LLC—Discontinuance Exemption—in Dutchess County, NY, and STB Docket No. AB-55 (Sub-No. 652X), CSX Transportation, Inc.—Discontinuance Exemption—in Dutchess County, NY.

² By decision and NITU served on August 26, 2009, a second NITU was issued for Poughkeepsie-Highland Bridge Co., Inc., d/b/a Walkway Over the Hudson (Walkway) to negotiate an interim trail use/rail banking agreement with CSXT for a 0.5-mile portion of the 4.7-mile ROW between milepost QCK 29.5 and milepost QCK 30.0. By letter filed on September 10, 2009, CSXT stated that Walkway and CSXT had entered into a Purchase and Sale Agreement for the 0.5-mile portion to be transferred to Walkway.

³ In the October 2009 decision, a third NITU was issued to substitute the New York State Office of Parks, Recreation and Historic Preservation for Walkway as the trail user for the 0.5-mile segment of the ROW between milepost QCK 29.5 and milepost QCK 30.0.

October 2009 decision also extended the deadline for CSXT, as successor by merger to NYC,⁴ to file a notice of consummation of the abandonment, until May 17, 2010.

By letter filed on March 18, 2010, CSXT requests a 180-day extension of the NITU negotiating period for the 4.2-mile segment. CSXT states that it has been unable to finalize negotiations with the County and that it desires to continue to negotiate for interim trail use/rail banking with the County. In addition, CSXT requests an extension of time, until November 13, 2010, to exercise abandonment authority.⁵

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 by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.⁶ 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). An extension of 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). Also, an extension of time to consummate the abandonment and to file a notice of consummation in this proceeding is justified. Accordingly, the NITU negotiating period for the 4.2-mile segment will be extended for an additional 180 days, from March 18, 2010, to September 14, 2010, and the consummation notice filing deadline will be extended to November 13, 2010. Given the time that has elapsed since abandonment was authorized, the parties are urged to conclude their negotiations so that further extensions will not be necessary.

This decision 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. CSXT's request to extend the NITU negotiating period for the 4.2-mile segment is granted.

⁴ See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (Sub-No. 94) (STB served Nov. 7, 2003) (authorizing consolidation of NYC within CSXT).

⁵ 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.

⁶ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

3. The NITU negotiating period for the 4.2-mile segment is extended to September 14, 2010.

4. The authority to abandon must be exercised, and the notice of consummation must be filed, on or before November 13, 2010.

5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.