

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 6X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT  
EXEMPTION—IN SHELBY COUNTY, OH

Decided: April 23, 2002

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 .90 miles of railroad between milepost QIO 163.98 and milepost QIO 163.08 in Sidney, Shelby County, OH. Notice of the exemption was served and published in the Federal Register on March 25, 2002 (67 FR 13678-79).<sup>1</sup> The exemption is scheduled to become effective on April 24, 2002.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on March 29, 2002. Comments to the EA, due April 12, 2002, have been received. In that EA, SEA indicated that the National Geodetic Survey (NGS) has identified three geodetic station markers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that may disturb or destroy these markers to plan for their relocation. Therefore, SEA recommends that a condition be imposed requiring NYC to consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers in order to plan for their potential relocation.

In the EA, SEA stated that the Ohio Historical Society (SHPO) had not completed its assessment of the potential impact of this project on historic resources and recommended that NYC retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). SEA states that the SHPO submitted a letter requesting that NYC provide it with photographs of the section of rail line proposed for abandonment, along with photographs of the immediate area that would establish the setting and show nearby buildings. Accordingly, to address the SHPO's concerns regarding historic properties, SEA states that NYC provide the SHPO with photographs of the section of rail line proposed for abandonment, along

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<sup>1</sup> While the notice embraced the proposed discontinuance in STB Docket No. AB-55 (Sub-No. 604X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Shelby County, OH, the environmental conditions discussed in this decision are imposed on the proposed abandonment.

with photographs of the immediate area that would establish the setting and show nearby buildings.<sup>2</sup> Therefore, SEA recommends the imposition of a condition requiring NYC retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line until completion of the section 106 process of the NHPA.

In addition, SEA states that the U.S. Department of the Interior, Fish and Wildlife Service, Ecological Services, Reynoldsburg, Ohio Office (FWL), has indicated that the proposed abandonment is within the range of the Federally-endangered species Indiana bat (*Myotis sodalis*).<sup>3</sup> Accordingly, to avoid or minimize potential impacts to the summer habitat of the Indiana bat, SEA recommends that a condition be imposed requiring NYC during salvage activities to save trees exhibiting characteristics of the Indiana bat habitat wherever possible, and if the trees must be cut, they should not be cut between April 15 and September 15. SEA further states that, if this time restriction is unacceptable, a survey to determine if bats are present shall be conducted in coordination with the FWL, Reynoldsburg Office endangered species coordinator. SEA's recommended conditions will be imposed.

SEA indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed April 12, 2002, the City of Sidney, Ohio (City) filed a request for the issuance of a notice of interim trail use/rail banking (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, so that it could negotiate with NYC for the use of the line as a recreational trail.<sup>4</sup> 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 exemption.

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<sup>2</sup> SEA notes that the SHPO also requested that NYC conduct background research on the immediate area to identify historic properties, thereby suggesting that the area of potential effect extends beyond the rail line right-of-way. However, the Board can impose historic preservation conditions only to the extent that the particular property (in this case, the rail line or right-of-way proposed for abandonment) is owned by the applicants. Accordingly, SEA does not recommend granting the SHPO's request for a condition in this proceeding requiring background research on nearby historic properties, and the request will not be granted.

<sup>3</sup> FWL notes that summer habitat requirements for the species include: dead or live trees and snags with peeling or exfoliating bark, split tree trunk and/or branches, or cavities, which may be used as maternity roost areas; live trees (such as shagbark hickory) which have exfoliating bark; and stream corridors, riparian areas, and upland woodlots which provide forage sites.

<sup>4</sup> The March 26 notice provided for trail use/rail banking requests to be filed by April 4, 2002.

By reply filed April 12, 2002, CSXT states that it is not willing to negotiate with the City for interim trail use. Therefore, because 16 U.S.C. 1247(d) permits negotiations for interim trail use only on a voluntary basis, the Board cannot issue a NITU in this proceeding. See Rail Abandonment—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

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 Trails, 2 I.C.C.2d at 609.<sup>5</sup> 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. NYC may remove tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, trestles, culverts, and tunnels intact during that period. 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 appropriate for public purposes.

As conditioned, 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. The request for imposition of a notice of interim trail use is denied.
3. The request for imposition of a public use condition is granted. The exemption of the abandonment of the line described above is subject to the conditions that NYC shall: (a) retain its interest in and take no steps to alter the historic integrity of the right-of-way until completion of the section 106 process of the NHPA; (b) consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers in order to plan for their potential relocation; (d) save trees exhibiting characteristics of Indian bat habitat wherever possible, and if the tress must be cut, they should not be cut between April 15 and September 15, and, if this time restriction is unacceptable, a survey to determine if bats are present shall be conducted in coordination with the FWL's Reynoldsburg Office endangered species coordinator; and (c) leave intact all of the right-of-way underlying the tracks, including bridges, culverts and tunnels (but not track, ties and signal equipment), for a period of 180 days from the April 24, 2002 effective

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<sup>5</sup> Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

date of the abandonment exemption (until October 21, 2002), to enable any State or local government agency, or other interested person to negotiate the acquisition of the line for public use.

4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary