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SERVICE DATE - OCTOBER 9, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (sub-No. 3X)<sup>1</sup>

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

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: October 5, 2001

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 Discontinues of Service for NYC to abandon and CSXT to discontinue service over approximately 1.91 miles of railroad between milepost QBH-0.59 and milepost QBY-2.50 in Pittsfield, Berkshire County, MA. Notice of the exemption was served and published in the Federal Register on August 13, 2001 (66 FR 42582-83). The notice stated that the exemption would be effective on September 12, 2001, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) was filed by August 23, 2001. On August 27, 2001, Housatonic Railroad Company (Housatonic) late-filed a formal expression of intent to file an OFA in order to purchase the entire line. Housatonic requested that the Board waive its regulations at 49 CFR 1152.27(c)(2) and accept its late-filed notice of intent. By decision served September 7, 2001, the proceeding was reopened, Housatonic's late-filed notice of intent was accepted, the exemption was made subject to several environmental conditions,<sup>2</sup> and the due date for Housatonic to file its OFA was established as September 12, 2001. As a result of the acceptance of Housatonic's notice of intent, the effective date of the exemption was automatically stayed until September 22, 2001.

On September 6, 2001, Housatonic filed a petition to toll the period for submitting an OFA for 30 days (until October 12, 2001), stating that CSXT had not provided it with the

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<sup>1</sup> The notice issued on August 13, 2001, embraced STB Docket No. AB-55 (Sub-No. 595X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Berkshire County, MA.

<sup>2</sup> The environmental conditions required that NYC: (1) consult with the National Geodetic Survey at least 90 days prior to disturbing or destroying any geodetic markers in order to plan for their relocation; and (2) consult with the Pittsfield Conservation Commission prior to salvage operations regarding protection of wetland resources.

financial data prescribed in 49 CFR 1152.27(a). By decision served September 11, 2001, the time period for Housatonic to file its OFA was extended until October 12, 2001, and the effective date was further postponed until October 22, 2001.

On September 17, 2001, Housatonic filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$27,750. Housatonic stated that it had not received the information requested from CSXT and had been informed that the information is unlikely to be available before October 12, 2001. Housatonic stated that it therefore submitted its OFA based upon the information available to it. Housatonic also stated that it “reserves the right to revise its offer of financial assistance if it deems a revision to be appropriate upon receipt of the requested information from CSXT.”

By decision served September 21, 2001, it was determined that review of Housatonic’s OFA would be premature at that time, because Housatonic had not received the requested information from CSXT. The Board stated that, therefore, Housatonic’s OFA will be reviewed after the October 12, 2001 due date for OFAs. In the same decision, CSXT was directed to provide Housatonic with the requested information. The Board further stated that if the requested CSXT information was not received in time for Housatonic to use the information to revise its offer by October 12, 2001, the Board stood ready to grant a further 30-day extension of the OFA due date so that the need information can be obtained, assessed, and used in revising the OFA.

On October 2, 2001, CSXT filed a request to for a 30-day extension in accordance with 49 CFR 1152.27(c)(2)(ii)(D), to develop and submit the required information requested by Housatonic. CSXT states that it has been actively developing appraisals of the right-of-way and track materials on the line since receiving Housatonic’s request, but will not be able to furnish the required information to Housatonic by the October 12, 2001 deadline.

Under section 1152.27(c)(2)(ii)(C), the Board will entertain petitions to toll the period for filing OFAs when good cause is shown. In view of CSXT’s request, its deadline to provide the requested information prescribed in 49 CFR 1152.27(a) to Housatonic is extended to November 12, 2001. CSXT is directed to inform the Board when it has developed and submitted the requested information to Housatonic. Housatonic’s OFA will not be reviewed until CSXT has provided the requested information.<sup>3</sup>

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

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<sup>3</sup> As indicated in the September 21, 2001 decision, If Housatonic filed nothing further on its OFA after receiving the requested information, or states that it will stand on its offer as made, the OFA filed September 17, 2001, will be reviewed at that time. If Housatonic revises its offer based on information received from CSXT, the revised offer will be reviewed.

It is ordered:

1. CSXT's request is granted.
2. CSXT is directed to provide Housatonic with the requested information by November 12, 2001.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary