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SERVICE DATE - SEPTEMBER 5, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 3X)

NEW YORK CENTRAL LINES, LLC
ABANDONMENT IN BERKSHIRE COUNTY, MASSACHUSETTS

STB Docket No. AB-55 (Sub-No. 595X)

CSX TRANSPORTATION, INC.
DISCONTINUANCE OF SERVICE IN BERKSHIRE COUNTY, MASSACHUSETTS

Decided: September 4, 2001

This decision denies a petition to stay the effectiveness of the exemptions in these proceedings filed by the Berkshire Regional Planning Commission.

BACKGROUND

By joint notice filed on July 24, 2001, and published in the Federal Register on August 13, 2001, at 66 FR 42582, New York Central Lines, LLC seeks to abandon, and CSX Transportation, Inc. seeks to discontinue service over, approximately 1.91 miles of railroad in Berkshire County, MA. These exemptions are scheduled to become effective on September 12, 2001, unless stayed pending reconsideration.¹ Petitions to stay that did not involve environmental issues, formal expressions of intent to file an OFA, or trail use/rail banking requests under 49 CFR 1152.29 were due by August 23, 2001.

By petition filed on August 24, 2001, the Berkshire Regional Planning Commission (Berkshire) requests that the Board stay the effectiveness of the exemption for 6 months.² Berkshire seeks the stay in order to study the effect of the termination of service and to determine how to react to it. Berkshire alleges that it would suffer irreparable harm without a stay and that there are no parties that would be irreparably harmed if a stay were granted.

¹ On August 27, 2001, the Board received a petition from Housatonic Railroad Company asking the Board to waive its regulations at 49 CFR 1152.27(c)(2) and accept a late-filed notice of intent to file an offer of financial assistance, also tendered on August 27, 2001. That petition will be addressed in a separate decision.

² Berkshire's petition for stay was filed late. Petitions for stay were due by August 23, 2001.

Berkshire has not asked to have the abandonment authority revoked. Rather, the petitioner is asking us to stay the exemption merely to allow it to study the effects of a loss of rail service and right-of-way so that Berkshire can decide if it wishes to oppose abandonment. Neither our regulations nor our governing statute provide for stays of abandonment proceedings for such a reason. Berkshire has not shown (or even alleged) that the notice was defective or that we should reconsider and revoke the exemption. Berkshire's bare assertion that it would suffer irreparable harm is wholly unsupported. A delay of 6 months in the authority to abandon a line that has carried no traffic for 2 years or more would force the carrier seeking abandonment to continue to incur opportunity costs by holding on to this property while earning no revenue from it. That is plainly contrary to the statutory directive that we expedite abandonment proceedings. See H.R. Rep. No. 1430, 96th Cong., 2d Sess. 125 (1980). Accordingly, Berkshire's stay request will be denied.

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

It is ordered:

1. Berkshire's petition for stay is denied.
2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary