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SERVICE DATE – APRIL 15, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 2X)

NEW YORK CENTRAL LINES, LLC–ABANDONMENT  
EXEMPTION–IN MIDDLESEX COUNTY, MA

Decided: April 14, 2008

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 4.17 miles of railroad between milepost QBH-2.60 near Sherborn and milepost QBH-6.77 near Holliston, in Middlesex County, MA. On August 31, 2001, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the Town of Sherborn (Sherborn) and the Town of Holliston (Holliston) to negotiate an interim trail use/rail banking agreement with applicants for the right-of-way in this proceeding. At the request of applicants, the negotiation period under the NITU was extended several times; the latest extension, served on September 24, 2007, extended the negotiation period until February 23, 2008. The September 24, 2007 decision also extended the deadline for CSXT to file its notice of consummation until April 23, 2008.

By letter filed on April 1, 2008, Sherborn and Holliston requested an extension of the negotiating period under the NITU until February 28, 2009. On April 10, 2008, CSXT, as successor by merger to NYC, filed its response, stating that it concurs with an extension until February 23, 2009, has not consummated the abandonment, has been unable to finalize negotiations, but desires to continue to negotiate interim trail use/rail banking with Sherborn and Holliston. CSXT further states that the parties have procured the services of a third party appraiser to review and analyze the appraisals previously obtained by each of the Towns and CSXT in the hopes of reaching a final agreement. Additionally, CSXT requests an extension of the consummation notice filing deadline until April 24, 2009.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstance, an extension of the negotiation 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).<sup>1</sup> An extension of the negotiating period will promote the

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<sup>1</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, as agreed by the parties, the negotiating period will be extended for one year to February 23, 2009. The consummation deadline will be extended to April 24, 2009.<sup>2</sup> Given the time that has elapsed since abandonment was authorized, the parties again 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. Applicants' request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to February 23, 2009.
3. The authority to abandon must be exercised on or before April 24, 2009.
4. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary

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<sup>2</sup> Although the request exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—Wendel-Alturas Line in Modoc and Lassen Counties, CA, Docket No. AB-12 (Sub-No. 184X) (STB served Sept. 1, 2005).