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SERVICE DATE – MARCH 10, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 565 (Sub-No. 1X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—IN MIDDLESEX
COUNTY, MASS.

Decided: March 7, 2014

By decision and notice of interim trail use or abandonment (NITU) served on October 12, 2001 (October 2001 decision), the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by New York Central Lines, LLC (NYC) of 4.80 miles of railroad known as the Albany Division, Fitchburg Subdivision, between milepost QBS 0.00 at Framingham and milepost QBS 4.80 at South Sudbury, in Middlesex County, Mass. (the Line), subject to trail use, public use, and standard employee protective conditions.¹

The October 2001 decision included a NITU under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29 authorizing a 180-day period for the Town of Sudbury (Sudbury) to negotiate an interim trail use/rail banking agreement with CSXT for a 1.4-mile portion of the Line extending north from the Framingham town line to the intersection of the former Penn Central Transportation Company line at milepost QBS 4.80 (Sudbury portion). By decision served on December 12, 2006, a second NITU was issued authorizing a 180-day period for the Town of Framingham (Framingham) to negotiate an interim trail use/rail banking agreement with CSXT for a 3.4-mile portion of the right-of-way between milepost QBS 0.00 at Framingham and milepost QBS 3.40 at the Framingham town line (Framingham portion). By a series of decisions, the NITU negotiating periods have been extended a number of times, most

¹ Certain prior decisions or notices in this proceeding embraced the related proceeding CSX Transportation, Inc.—Discontinuance of Service Exemption—In Middlesex County, Mass., Docket No. AB 55 (Sub-No. 593X). CSX Corporation (the parent company of CSX Transportation, Inc. (CSXT)) and Norfolk Southern Corporation jointly acquired control of Conrail Inc. and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail were assigned to NYC, which at the time was a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The Line authorized for abandonment in this proceeding is included among the property operated by CSXT pursuant to the NYC operating agreement. CSXT is the successor to NYC. See CSX Corp.—Control—Conrail Inc., FD 33388 (Sub-No. 94) (STB served Nov. 7, 2003).

recently until April 27, 2012, for the Framingham portion² and until October 20, 2013, for the Sudbury portion.³

By letter filed on January 29, 2014, Sudbury requests an additional extension of the NITU negotiating period for the Sudbury portion of the Line until October 16, 2014.⁴ Sudbury states that it and CSXT continue to seek agreement regarding the acquisition price for interim trail use/rail banking and wish to continue negotiating a purchase and sale agreement. By letter filed on February 19, 2014, CSXT agrees with the extension request and supports extending the NITU negotiating period for the Sudbury portion of the Line until October 16, 2014.

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, the Board retains jurisdiction and the NITU negotiating period may be extended.⁵ Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period for the Sudbury portion of the Line will be extended until October 16, 2014. As noted in the decision served in this docket on May 26, 2006, the resulting extension of the consummation deadline⁶ is deemed to cover the 4.80-mile Line.

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

It is ordered:

1. The request to extend the NITU negotiating period for the Sudbury portion of the Line is granted.

² See N.Y. Cent. Lines, LLC—Aban. Exemption—in Middlesex Cnty., Mass., AB 565 (Sub-No. 1) (STB served Oct. 28, 2011).

³ See N.Y. Cent. Lines, LLC—Aban. Exemption—in Middlesex Cnty., Mass., AB 565 (Sub-No. 1) (STB served May 2, 2013).

⁴ Sudbury states that the 1.4-mile portion of the line is between milepost QBS 3.40 and milepost QBS 4.90. In its reply, CSXT notes that the Sudbury portion ends at milepost QBS 4.80.

⁵ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

⁶ See 49 C.F.R. § 1152.29(e)(2).

2. The NITU negotiating period for the 1.4-mile portion of the Line between milepost QBS 3.40 and milepost QBS 4.80 is extended until October 16, 2014.

3. This decision is effective on the date of service.

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