

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: June 18, 2010

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, extending from milepost QBS 0.00 at Framingham to milepost QBS 4.80 at South Sudbury, in Middlesex County, Mass., subject to trail use, public use, and standard employee protective conditions.¹ The October 2001 decision authorized the Town of Sudbury (Sudbury) to negotiate with the carrier for interim trail use/rail banking for the 1.4-mile portion of the line that extends north from the Framingham town line to the intersection of the former Penn Central Transportation Company line (Sudbury portion). By decision served December 12, 2006, the Town of Framingham (Framingham) was authorized to negotiate with the carrier for interim trail use/rail banking for the 3.4-mile portion of the right-of-way that extends from milepost QBS 0.00 at Framingham to milepost QBS 3.40 at the Framingham town line (Framingham portion). The NITU negotiating period was extended through May 8, 2010, for both the Sudbury and Framingham portions of the line by a series of decisions, the most recent of which was served on December 29, 2009.

The October 2001 decision stated that, if consummation had not been effected by the filing of a notice of consummation by October 12, 2002, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. By a series of

¹ Certain prior decisions or notices in this proceeding have embraced the related AB 55 (Sub-No. 593X), CSX Transportation, Inc.—Discontinuance of Serv. Exemption—In Middlesex County, Mass. CSX Corporation, CSX Transportation, Inc.'s (CSXT) parent company, 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. et al.—Control—Conrail Inc. et al., FD 33388 (Sub-No. 94) (Supplemental Transaction) (STB served Nov. 7, 2003).

decisions, the most recent of which was served on December 29, 2009, the consummation date for the entire 4.80-mile line was extended until July 7, 2010.

By letter filed on May 11, 2010, Framingham requests an extension of the NITU negotiating period for the Framingham portion of the line.² Framingham states that it has recently completed an independent appraisal of the property and has requested in writing that acquisition negotiations be initiated with CSXT regarding the right-of-way. By letter filed on May 12, 2010, Sudbury requests a 180-day extension of the NITU negotiating period for the Sudbury portion of the line. Sudbury states that CSXT and Sudbury have reached an agreement on the acquisition price regarding the NITU and that Sudbury has signed the Purchase and Sale Agreement as revised by CSXT. Sudbury further states it anticipates that CSXT will be signing the Purchase and Sale Agreement shortly so the parties can proceed with an immediate purchase.³

By letter filed on May 14, 2009, CSXT states that it agrees with the proposed extension requests and supports an extension of the negotiating periods until November 4, 2010. Additionally, in that same letter, CSXT seeks an extension of the consummation deadline until January 3, 2011, 60 days after the expiration date of the trail use negotiation period.⁴

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 periods may be extended.⁵ Under the circumstances, further extension of the negotiating periods are 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 periods will be extended for an additional 180 days from the May 8, 2010, expiration date, until November 4, 2010. Given the length of time the parties have had to negotiate a trail use agreement, the parties are urged to conclude their negotiations so that further extensions are not necessary.

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

² Framingham's request for the NITU extension was in the form of a NITU request.

³ Sudbury states in its extension request that the 1.4-mile portion of the line extends from milepost QBS 3.40 to milepost QBS 4.90. The correct mileposts are from milepost QBS 3.40 to milepost QBS 4.80, which makes the length of the line portion approximately 1.4 miles. Additionally, Sudbury inadvertently calculated the 180-day extension of the NITU expiration date to be November 1, 2010, instead of November 4, 2010.

⁴ Under 49 C.F.R. § 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

⁵ See Rail Abands.—Supplemental Trails Act Procedures, 4 I.C.C. 2d 152, 157-58 (1987).

It is ordered:

1. The requests to extend the NITU negotiating periods are granted.
2. The NITU negotiating periods are extended until November 4, 2010, for CSXT to negotiate with Framingham as to the 3.4-mile portion of the line between milepost QBS 0.00 and milepost QBS 3.40 and with Sudbury as to the 1.4-mile portion of the line between milepost QBS 3.40 and milepost QBS 4.80.
3. The request for an extension of time to consummate the abandonment is granted, and the authority to abandon must be exercised on or before January 3, 2011.
4. This decision is effective on the date of service.

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