

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: November 15, 2011

In this decision, an extension is granted for negotiating a trail use/rail banking agreement.

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 between milepost QBS 0.00 at Framingham and 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 at milepost QBS 4.80 (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). By a series of decisions, the NITU negotiating period was extended for both the Sudbury and Framingham portions of the line until October 30, 2011. By decision served on October 28, 2011, the NITU negotiating period for the Framingham portion of the line was further extended until April 27, 2012.

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

By letter filed on November 1, 2011, Sudbury requests a 180-day extension of the NITU negotiating period for the Sudbury portion of the line.² Sudbury states that CSXT and Sudbury are continuing to seek agreement regarding the acquisition price for interim trail use/rail banking and wish to continue negotiating a purchase and sale agreement. Sudbury further states that it is evaluating the benefits of contracting for an updated appraisal. By letter filed on November 2, 2011, CSXT agrees with the proposed 180-day extension request and supports an extension of the negotiating period for the Sudbury portion of the line until April 27, 2012.

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.³ Under the circumstances, further extension of the negotiating periods 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 for an additional 180 days, until April 27, 2011.⁴

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 is granted.
2. The period for CSXT and Sudbury to negotiate an interim trail use/rail banking agreement under the NITU is extended to April 27, 2012, for the 1.4-mile portion of the line between milepost QBS 3.40 and milepost QBS 4.80.

² 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. In its reply, CSXT states that 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 calculated the 180-day extension of the NITU expiration date to be May 2, 2012, instead of April 27, 2012.

³ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

⁴ If a legal or regulatory barrier to consummation exists at the end of time period for consummation, the railroad is required to file its notice of consummation within 60 days after removal or expiration of that legal or regulatory barrier. 49 C.F.R. § 1152.29(e)(2). Because extension of the NITU negotiating period is such a barrier, CSXT's deadline for filing its notice of consummation for the Sudbury portion of the line will be June 26, 2012, if trail use negotiations are unsuccessful.

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

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