

35178
DO

SERVICE DATE - OCTOBER 28, 2004

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: October 26, 2004

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 a 4.80-mile portion of a line 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, MA, subject to trail use, public use, and standard employee protective conditions.¹ The October 2001 decision authorized the Town of 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. The NITU negotiating period was extended through October 7, 2004, by decisions served April 10, 2002, October 7, 2002, May 15, 2003, October 6, 2003, and May 4, 2004. The October 2001 decision also stated that, if consummation has not been effected by the filing of a notice of consummation by October 12, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. By decision served October 7, 2002, the consummation date was extended until June 6, 2003.²

¹ Certain of the prior decisions or notices in this proceeding have embraced the related STB Docket No. AB-55 (Sub-No. 593X), CSX Transportation, Inc.—Discontinuance of Service Exemption—In Middlesex County, MA. 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 have been assigned to NYC, 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.

² The pendency of conditions, including trail use conditions, serves to extend the deadline for consummation of the abandonment until 60 days after the expiration, satisfaction, or removal of the legal or regulatory barrier to consummation.

On October 6, 2004, CSXT filed a request to extend the NITU negotiating period until April 7, 2005. CSXT states that the parties have been unable to complete negotiations. CSXT also requests to extend the consummation notice filing deadline until June 7, 2005.³

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. 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 Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Because an extension of the consummation notice filing deadline and the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d), will be granted. Accordingly, the NITU negotiating period will be extended until April 7, 2005,⁴ and the abandonment consummation date will be extended until June 7, 2005.

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

It is ordered:

1. CSXT's requests to extend the NITU negotiating period for the 1.4-mile line segment described above, and to extend the time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended until April 7, 2005.
3. The authority to abandon must be exercised on or before June 7, 2005.

³ Under 49 CFR 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.

⁴ Although the request exceeds by 2 days the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company–Abandonment Exemption–in Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

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

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

Vernon A. Williams
Secretary