

SERVICE DATE – APRIL 17, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 17X)

NEW YORK CENTRAL LINES, LLC–ABANDONMENT EXEMPTION–IN DUTCHESS
COUNTY, NY

Decided: April 14, 2006

By decision and notice of interim trail use or abandonment (NITU) served on October 15, 2004 (October 2004 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 approximately 4.7 miles of railroad line between milepost QCO 0.0 and milepost QCO 3.2 and between milepost QCK 29.5 and milepost QCK 31.0, in the City and Town of Poughkeepsie, Dutchess County, NY.¹ In the October 2004 decision, a 180-day period was authorized to permit public use negotiations² and to permit Dutchess County (the County) to negotiate an interim trail use/rail banking agreement with NYC for the right-of-way.³ The NITU negotiating period was extended by decisions served on June 14, 2005, and October 27, 2005 (October 2005 decision). The latest extension expired on April 8, 2006. The October 2005 decision also extended the deadline for filing a notice of consummation of the abandonment from December 14, 2005, until June 7, 2006.

By letter filed on April 10, 2006, CSXT, as successor by merger to NYC, filed a request to extend the NITU negotiating period for 180 days from April 8, 2006, until October 5, 2006. CSXT states that it has not consummated the abandonment, has been unable to finalize negotiations with the County, and desires to continue to negotiate for interim trail use/rail banking with the County. Additionally, CSXT requests an extension of time to exercise the abandonment authority to December 4, 2006.⁴

¹ The October 2004 decision also embraced STB Docket No. AB-873X, New York and Eastern Railway, LLC–Discontinuance Exemption–in Dutchess County, NY, and STB Docket No. AB-55 (Sub-No. 652X), CSX Transportation, Inc.–Discontinuance Exemption–in Dutchess County, NY, in which New York and Eastern Railway, LLC, and CSX Transportation, Inc. (CSXT), respectively, were granted exemptions to discontinue service over the line.

² The public use condition expired on April 13, 2005.

³ The October 2004 decision also imposed several environmental conditions.

⁴ 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.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.⁵ Under the circumstances, an 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). An extension of the consummation deadline is also justified. Accordingly, the NITU negotiating period will be extended to October 5, 2006, and the consummation notice filing deadline will be extended to December 4, 2006.

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

It is ordered:

1. CSXT's request to extend the negotiating period under the NITU and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended to October 5, 2006.
3. The authority to abandon must be exercised on or before December 4, 2006.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

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