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SERVICE DATE – LATE RELEASE MAY 31, 2011

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: May 31, 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 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.<sup>1</sup> 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 most recent of which was served on December 27, 2010, the NITU negotiating period was extended for both the Sudbury and Framingham portions of the line until May 3, 2011. The December 27, 2010 decision also extended the deadline for NYC to file its notice of consummation until July 2, 2011.

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<sup>1</sup> Certain prior decisions or notices in this proceeding have embraced the related AB 55 (Sub-No. 593X), CSX Transportation, Inc.—Discontinuance of Service Exemption—In Middlesex County, Massachusetts. 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 May 4, 2011, Sudbury requests a 180-day extension of the NITU negotiating period for the Sudbury portion of the line.<sup>2</sup> Sudbury states that CSXT and Sudbury have reached an agreement on the acquisition price regarding interim trail use/rail banking and that Sudbury has signed the Purchase and Sale Agreement (agreement) as revised by CSXT. Sudbury further states that CSXT has not signed the agreement and Sudbury and CSXT wish to continue negotiating regarding the agreement. By letter filed on May 12, 2011, Framingham also requests a 180-day extension of the NITU negotiating period for the Framingham portion of the line. Framingham states that it is updating its appraisal of the property and continuing to negotiate with CSXT regarding the acquisition price for interim trail use/rail banking. By letters filed on May 9, 2011 and May 12, 2011, CSXT agrees with the proposed 180-day extension requests and supports an extension of the negotiating periods until October 30, 2011.

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.<sup>3</sup> 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 periods will be extended for an additional 180 days, until October 30, 2011.

If the negotiating period for either segment expires without a trail use/rail banking agreement having been reached, the abandonment consummation deadline for that segment will be December 29, 2011 (60 days after the negotiating period expires). See 49 C.F.R. § 1152.29(e)(2).

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

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<sup>2</sup> 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 November 2, 2011, instead of October 30, 2011.

<sup>3</sup> See Rail Abans.—Use of Rights-of-Way as Trails—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 October 30, 2011, 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. This decision is effective on the date of service.

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