

SERVICE DATE – OCTOBER 23, 2019

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

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

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—IN DUTCHESS
COUNTY, N.Y.

Decided: October 22, 2019

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, N.Y. (the Line).¹ The October 2004 decision included a NITU under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29 providing a 180-day period for Dutchess County (the County) to negotiate an interim trail use/rail banking agreement with NYC for the right-of-way. The October 2004 decision also imposed several environmental conditions, including one that requires CSXT to complete the New York Department of State's Coastal Management Program Federal Consistency Assessment prior to salvaging or disposing of the right-of-way (NYDS Coastal Management condition).

By decision served on August 26, 2009, a second NITU was issued providing time for Poughkeepsie-Highland Bridge Co., Inc., d/b/a Walkway Over the Hudson (Walkway) to negotiate an interim trail use/rail banking agreement with CSXT² for a 0.5-mile portion of the Line between milepost QCK 29.5 and milepost QCK 30.0. On September 9, 2009, CSXT notified the Board that Walkway and CSXT had entered into a Purchase and Sale Agreement for that 0.5-mile portion to be transferred to Walkway for interim trail use pursuant to the Trails Act

¹ The October 2004 decision also embraced Docket No. AB 873X, New York & Eastern Railway—Discontinuance Exemption—in Dutchess County, N.Y., and Docket No. AB 55 (Sub-No. 652X), CSX Transportation, Inc.—Discontinuance Exemption—in Dutchess County, N.Y., in which New York and Eastern Railway, LLC, and CSX Transportation, Inc. (CSXT), respectively, each sought an exemption to discontinue service over the Line.

² CSXT is the successor to NYC. See CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., FD 33388 (Sub-No. 94) (STB served Nov. 7, 2003) (authorizing consolidation of NYC within CSXT).

Meanwhile, the NITU negotiating period for the remaining 4.2 miles of the Line under the original October 2004 NITU was extended several times, eventually expiring on September 14, 2010. Thereafter, two more NITUs were issued that subsequently expired: one permitted Walkway to negotiate with respect to a 1.0-mile segment of the Line between milepost QCK 30.0 and milepost QCK 31.0 that expired on June 26, 2012;³ the other permitted Georgetown and High Line Railway Company, LLC, to negotiate with respect to a 3.2-mile segment of the Line between milepost QCO 0.0 and milepost QCO 3.2 that expired on July 21, 2012.⁴

On July 30, 2019, the County filed a request for a new NITU for a 2.72-mile portion of the Line between milepost QCO 0.48 and milepost QCO 2.1±, and between milepost QCO 2.0± and milepost QC 74.08 (which it claims is formerly milepost QCO 3.2). The County again submitted a statement of willingness to assume legal and tax liability and managerial responsibility for that portion of the Line and acknowledged that use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

In support of its request, the County asserts that CSXT has not complied with the NYDS Coastal Management condition imposed in this proceeding. The County contends that this condition is a regulatory or legal barrier to consummation, as the Board indicated in its January 2012 decision imposing the fourth NITU. See N.Y. Cent. Lines, LLC—Aban. Exemption—in Dutchess Cty., N.Y., AB 565 (Sub-No. 17X), slip op. at 3 (STB served Jan. 23, 2012) (coastal management condition is a barrier to consummation) (citing Puget Sound & Pac. R.R.—Aban. Exemption—in Grays Harbor Cty., Wash., AB 1023 (Sub-No. 1X), slip op. at 4 (STB served Sept. 13, 2011)). See also 49 C.F.R. § § 1105.9; 1152.29(e)(2). The County thus argues that the abandonment authority is still in effect, that the abandonment has not been consummated, and that the 2.72-mile line portion of the Line remains eligible for the issuance of a NITU.

In a response filed on July 30, 2019, CSXT confirms that it has not complied with the NYDS Coastal Management condition imposed in the October 2004 decision and has not consummated the abandonment of the 2.72-mile portion. Additionally, CSXT agrees to negotiate with the County for interim trail use/rail banking of the 2.72-mile portion.

On August 1, 2019, NARPO filed a letter opposing the new NITU request, noting that abandonment was approved in 2004. NARPO also suggests that the 2.72-mile segment is not connected to the rail network and asks that the County be required to provide a “readable” map.

³ See N.Y. Cent. Lines, LLC—Aban. Exemption—in Dutchess Cty., N.Y., AB 565 (Sub-No. 17X) (STB served Dec. 29, 2011).

⁴ See N.Y. Cent. Lines, LLC—Aban. Exemption—in Dutchess Cty, N.Y., AB 565 (Sub-No. 17X) (STB served Jan. 23, 2012).

CSXT and the County each replied on August 16, 2019, arguing that they have met the requirements of 49 C.F.R. § 1152.29 for the issuance of a NITU for the 2.72-mile segment. CSXT further explains that the segment for which a NITU is sought connects at its westernmost point, milepost QC 74.08, to an active north-south Metro-North Commuter Railroad (Metro North) line over which CSXT operates via trackage rights, as reflected on a map appended to CSXT's filing. The County also notes that it has reached an agreement with CSXT to acquire the 2.72-mile segment of the Line previously authorized to be abandoned for interim trail use/rail banking, subject to pre-closure due diligence. The County states that it intends to officially notify the Board of the agreement after the NITU is issued and the pre-closing due diligence is completed.

NARPO responded to these filings on August 19, 2019, noting that New York & Eastern Railway, LLC, one of the entities granted discontinuance authority in the October 2004 decision, consummated that authority in 2005, and seeking more information on Metro North's identity. On October 10, 2019, Dutchess County responded with more information on Metro North, and NARPO responded the same day questioning whether the Board has jurisdiction over the Metro North line as Metro North provides commuter service. CSXT responded to NARPO's filing on October 16, 2019, stating that it operates freight trains over the Metro North line. See also October 2004 Decision, slip op. at 2 (noting that CSXT stated that it provides rail service over its contiguous New York-Albany main line through Poughkeepsie). Dutchess County and NARPO filed separate responses on October 17, 2019. NARPO supplemented its filing on October 18, 2019.

Interim trail use/rail banking requests may be accepted as long as the Board retains jurisdiction over the right-of-way and the carrier is willing to enter into negotiations. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987). As the Board has previously noted, the NYDS Coastal Management condition, imposed in the October 2004 decision, is a barrier to consummation of the abandonment. Because the condition remains in place, the abandonment has not been consummated, and the Board retains jurisdiction to issue a NITU. See 49 C.F.R. § 1105.9; 1152.29(e)(2). Therefore, because CSXT is willing to negotiate for trail use with the County for the 2.72-mile portion of the Line, and the County's July 30, 2019 request complies with 49 C.F.R. § 1152.29, a NITU for the 2.72-mile portion will be issued for a period of 180 days.

It is ordered:

1. This proceeding is reopened.
2. The County's late-filed request for issuance of a NITU is accepted and granted.
3. Upon reconsideration, the decision served October 15, 2004, exempting the abandonment of the Line described above is modified to the extent necessary to issue a NITU

providing time to negotiate interim trail use/rail banking as set forth below for the 2.72-mile portion for a period of 180 days from the service date of this decision and notice, until April 20, 2020.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by April 20, 2020, for the portion of the right-of-way subject to the NITU, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line, subject to any outstanding conditions.

9. This decision and notice is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.