

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 4X)¹

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—
IN VERMILLION AND WARREN COUNTIES, IN

Decided: August 23, 2002

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively, applicants) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 6.12 miles of railroad between milepost QSO-5.18 near the Illinois/Indiana State line and milepost QS0-11.30 near Olin, in Vermillion and Warren Counties, IN. Notice of the exemption was served and published in the Federal Register on September 28, 2001 (66 FR 49741-42). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on October 30, 2001, but on October 11, 2001, Flex-N-Gate Corporation (Flex) late-filed a notice of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) to purchase the entire line.²

¹ The notice of exemption served September 28, 2001, embraced STB Docket No. AB-55 (Sub-No. 597X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Vermillion and Warren Counties, IN.

² On October 15, 2001, applicants filed a request for a 60-day extension, in accordance with 49 CFR 1152.27(c)(2)(ii)(D), to develop and submit the required information requested by Flex. By decision served October 29, 2001, the proceeding was reopened, Flex's late-filed notice of intent was accepted, and the due date for Flex to file its OFA was established as December 28, 2001, and the effective date was further postponed to January 7, 2002. The October 29 decision also imposed several environmental conditions and provided that the requests for issuance of a notice of interim trail use under the National Trail System Act, 16 U.S.C. 1247(d), and for a public use condition under 49 U.S.C. 10905, would be held in abeyance pending completion of the OFA process. On December 18, 2001, Flex filed a petition to toll the 30-day period for submitting its OFA until January 28, 2002. By decision served December 21, 2001, the time period for Flex to file its OFA was extended until January 28, 2002, and the effective date of the exemption was extended until February 7, 2002.

On January 28, 2002, Flex timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line. By decision served January 31, 2002, the Board further postponed the effective date of the exemption in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed. Also, the January 31, 2002 decision identified February 27, 2002, as the date on or before which the buyer or seller could request the Board to establish the terms and conditions for purchase of the line. At the request of Flex, with CSXT's acquiescence, the time period for filing requests for the establishment of terms and conditions was extended to August 27, 2002, by decisions served February 26, 2002, March 22, 2002, April 26, 2002, June 10, 2002, and June 28, 2002.³

On August 20, 2002, Flex filed a motion for an additional 15-day extension (until September 11, 2002), of the deadline for filing requests for the establishment of terms and conditions. Flex states that it and CSXT are continuing to negotiate in good faith, that the oral agreement reached by the parties regarding the purchase price remains intact, and that additional time is needed to review the latest draft proposed by CSXT in order to determine whether to consummate the transaction contemplated between the parties. On August 21, 2002, CSXT indicated its opposition to the requested 15-day extension, stating that the parties have been negotiating a purchase and sale agreement for months. CSXT states that it has worked in good faith to finalize this transaction, has done nothing to hinder negotiations, and has not opposed the previous extensions, but that it would like to see the matter concluded. CSXT thus urges the Board not to extend the existing August 27 deadline. In order to provide additional time for the parties to reach a final agreement, the deadline for the parties to request the Board to establish the terms and conditions will be extended, but, in view of CSXT's opposition, the deadline will be extended only until September 4, 2002. Because of the strict deadlines applicable to the OFA process, this deadline will not be extended beyond September 4, 2002, without the acquiescence of CSXT.⁴

³ On May 14, 2002, CSXT filed a letter stating that one ending milepost was erroneously identified in the verified notice, and that the proposed abandonment and discontinuance is actually between milepost QSO-5.18 and QSO-11.09, rather than between milepost QSO-5.18 and milepost QSO-11.30 as previously indicated. CSXT advised that the portion of the right-of-way formerly owned by Conrail between mileposts QSO-11.09 and QSO-11.30 was authorized for abandonment in the 1980s and was abandoned by Conrail pursuant to that authorization. In the decision served June 10, 2002, the exemption was modified to delete the portion of the right-of-way between mileposts QSO-11.09 and QSO-11.30 from the abandonment and discontinuance authorizations and from the financial assistance process.

⁴ Any person filing a request to set terms and conditions must pay the requisite filing fee set forth at 49 CFR 1002.2(f)(26), which is currently set at \$16,700.

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

It is ordered:

1. Flex's request to extend the time period for either party to request the Board to establish the terms and conditions of the purchase is granted in part as discussed in this decision.
2. If CSXT and Flex cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before September 4, 2002.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary