

SERVICE DATE – APRIL 19, 2007

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 17, 2007

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, October 27, 2005, April 17, 2006, and October 5, 2006 (October 2006 decision). The latest extension expired on April 3, 2007. The October 2006 decision also extended the deadline for filing a notice of consummation of the abandonment from December 4, 2006, until June 2, 2007.

By letter filed on April 3, 2007, CSXT, as successor by merger to NYC, filed a request to extend the NITU negotiating period for 180 days from April 3, 2007, until September 30, 2007. CSXT states that it has not consummated the abandonment 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 November 29, 2007.⁴

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, and by statute may not be extended beyond the 180-day period.

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 has indicated its willingness to continue negotiations by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended.⁵ 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). An extension of the 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). Also, an extension to consummate the abandonment and to file a notice of consummation in this proceeding is justified. Accordingly, the NITU negotiating period will be extended to September 30, 2007, and the consummation notice filing deadline will be extended to November 29, 2007. Given the time that has elapsed since abandonment was authorized, however, the negotiation parties are urged to conclude their negotiations so that further extensions will not be necessary.

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 September 30, 2007.
3. The authority to abandon must be exercised on or before November 29, 2007.
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).