

SERVICE DATE - JUNE 28, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-565 (Sub-No. 10X)

NEW YORK CENTRAL LINES, LLC–ABANDONMENT
EXEMPTION–IN WORCESTER COUNTY, MA

Decided: June 27, 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 4.2 miles of railroad between milepost QBU-0.0 and milepost QBU-4.2 from Fitchburg to Leominster, in Worcester County, MA. Notice of the exemption was served and published in the Federal Register on May 30, 2002 (67 FR 37911).¹ The exemption is scheduled to become effective on June 29, 2002.

On May 30, 2002, and June 17, 2002, the Cities of Leominster and Fitchburg filed requests for a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905,² in order to negotiate with applicants for acquisition of the right-of-way for use as a recreational trail.³ Leominster and Fitchburg request that applicants be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that applicants be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. Leominster states that the time period is needed because it has not had an opportunity to assemble and review title information,

¹ The notice issued May 30, 2002, embraced STB Docket No. AB-55 (Sub-No. 616X), CSX Transportation, Inc.–Discontinuance of Service Exemption–in Worcester County, MA.

² The Board’s Section of Environmental Analysis served an environmental assessment on June 4, 2002, which indicated that the right-of-way may be suitable for other public use following abandonment.

³ Fitchburg’s filing did not indicate that it had been served on applicants. A Board staff member contacted the applicants’ representative and advised of Fitchburg’s filing.

complete a trail plan or commence negotiations with applicants. Fitchburg indicates that the 180-day time period is needed because it has not had an opportunity to complete a trail plan or commence negotiations with the applicants. Leominster and Fitchburg submitted statements of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on June 4, 2002, applicants indicated their willingness to negotiate with Leominster for interim trail use. In a response filed on June 27, 2002, applicants indicated their willingness to negotiate with Fitchburg for interim trail use for a portion of the line.⁴

Because Leominster's and Fitchburg's requests comply with the requirements of 49 CFR 1152.29 and applicants are willing to negotiate for trail use, a NITU will be issued that will permit both cities to negotiate with applicants. The parties may negotiate an agreement or agreements during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, NYC may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because Leominster and Fitchburg have satisfied these requirements, a 180-day public use condition will be imposed, commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, applicants must keep the remaining right-of-way

⁴ In their June 27 reply to Fitchburg, applicants also referred to their prior agreement to negotiate with Leominster as an agreement to negotiate as to a portion of the line.

intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, applicants are not required to deal exclusively with Leominster and Fitchburg, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on May 30, 2002, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, subject to the conditions that applicants keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels, for a period of 180 days after the June 29, 2002 effective date (until December 26, 2002), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.
3. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for 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 the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by December 26, 2002, interim trail use may be implemented. If no agreement is reached by that time, applicants may fully abandon the line.

8. This decision is effective on its service date.

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

Vernon A. Williams
Secretary