

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: February 13, 2009

In this decision, an extension of the period for negotiating a trail use agreement on a railroad line is granted.

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, MA, subject to trail use, public use, and standard employee protective conditions.¹ 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 (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). The NITU negotiating period was extended through November 14, 2008, for both the Sudbury and Framingham portions of the line by a series of decisions, the most recent of which was served on May 29, 2008.

¹ Certain prior decisions or notices in this proceeding have embraced the related STB Docket No. AB-55 (Sub-No. 593X), CSX Transportation, Inc.—Discontinuance of Service Exemption—In Middlesex County, MA. CSX Corporation, CSX Transportation, Inc.'s (CSXT) parent company, 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., STB Finance Docket No. 33388 (Sub-No. 94) (Supplemental Transaction) (STB served Nov. 7, 2003).

The October 2001 decision stated that, if consummation had not been effected by the filing of a notice of consummation by October 12, 2002, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. By decisions served on November 8, 2005, May 26, 2006, December 12, 2006, December 20, 2007, and May 29, 2008, the consummation date for the entire 4.80-mile line was extended until January 13, 2009.²

By letter filed on November 21, 2008, Sudbury requests a 180-day extension of the NITU negotiating period for the Sudbury portion of the line.³ Sudbury states that the parties are continuing to negotiate for interim trail use/rail banking. By letter filed on January 7, 2009, Framingham also submits a request for an extension of the NITU negotiating period for the Framingham portion of the line.

By letter filed on January 9, 2009, CSXT states that it agrees with the proposed extension requests and supports an extension of the negotiating period until May 13, 2009. Additionally, in that same letter, CSXT seeks an extension of the consummation deadline until July 12, 2009, 60 days after the expiration date of the trail use negotiation period.⁴

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.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). Accordingly, the NITU negotiating period will be extended for an additional 180 days from the November 14, 2008 expiration date, until May 13, 2009. Given the length of time the parties have had to negotiate a trail use agreement, the parties are urged to conclude their negotiations so that further extensions are not necessary.

² The pendency of certain conditions, including trail use conditions, serves to extend the deadline for consummation of the abandonment until 60 days after the expiration, satisfaction, or removal of the legal or regulatory barrier to consummation.

³ 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. 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. Also, Sudbury erroneously refers to a Board decision served on May 16, 2008, that extended the NITU negotiating period until November 17, 2008. The Board decision in this proceeding was served on May 29, 2008, and extended the NITU negotiating period until November 14, 2008. Thus, 180 days from November 14, 2008, is May 13, 2009.

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.

⁵ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C. 2d 152, 157-58 (1987).

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

It is ordered:

1. The requests to extend the NITU negotiating period are granted.
2. The NITU negotiating period is extended until May 13, 2009, for CSXT to negotiate with Sudbury as to the 1.4-mile portion of the line between milepost QBS 3.40 and milepost QBS 4.80 and with Framingham as to the 3.4-mile portion of the line between milepost QBS 0.00 and milepost QBS 3.40.
3. The request for an extension of time to consummate the abandonment is granted, and the authority to abandon must be exercised on or before July 12, 2009.
4. This decision is effective on the date of service.

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

Anne K. Quinlan
Acting Secretary