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SERVICE DATE - SEPTEMBER 7, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 3X)

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

STB Docket No. AB-55 (Sub-No. 595X)

CSX TRANSPORTATION, INC.
DISCONTINUANCE OF SERVICE IN BERKSHIRE COUNTY, MASSACHUSETTS

Decided: September 6, 2001

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 1.91 miles of railroad between milepost QBH-0.59 and milepost QBY-2.50 in Pittsfield, in Berkshire County, MA. Notice of the exemption was served and published in the Federal Register on August 13, 2001 (66 FR 42582-83). The notice stated that the exemption will be effective on September 12, 2001, unless stayed by the Board or unless a formal expression of intent to file a formal offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) was filed by August 23, 2001.¹

On August 27, 2001, Housatonic Railroad Company (Housatonic) late-filed a formal expression of intent to file an OFA in order to purchase the entire line² and requested that the Board waive its regulations at 49 CFR 1152.27(c)(2) and accept its late-filed notice of intent to file an OFA. Housatonic stated that it was under the impression that its notice of intent to file its OFA was due 10 days beyond the August 17, 2001 service date of the environmental assessment (EA) decision rather than 10 days beyond the August 13, 2001 Federal Register publication.³ While Housatonic's notice of intent was not filed on time, because CSXT has not objected, we

¹ On August 24, 2001, the Berkshire Regional Planning Commission filed a request that the Board stay the effectiveness of the exemption for 6 months. By decision served September 5, 2001, the petition to stay was denied.

² 49 CFR 1152.27(c)(2)(i).

³ The Board's rules specifically state that a notice of intent to file an OFA is due 10 days after the publication of the notice of exemption in the Federal Register (as indicated above, August 13, 2001).

will accept Housatonic's late-filed notice of intent. Housatonic's OFA is due September 12, 2001⁴ and the effective date of the exemption is postponed to September 22, 2001.

The Board's Section of Environmental Analysis (SEA) indicated in the EA⁵ that the National Geodetic Survey (NGS) has identified three geodetic station markers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that may disturb or destroy these markers to plan for their relocation. Therefore, SEA recommends that a condition be imposed requiring NYC to consult with NGS at least 90 days prior to disturbing or destroying any geodetic markers in order to plan for their relocation.

Additionally, by facsimile submission filed on August 31, 2001, Berkshire indicates the right-of-way crosses and runs adjacent to several areas of wetland resources. Berkshire further states that any rail salvage work in these areas should adhere to the Massachusetts Wetlands Protection Act and that any questions should be directed to the Pittsfield Conservation Commission (PCC). Therefore, SEA recommends that a condition be imposed requiring NYC to consult with the PCC prior to salvage operations regarding protection of wetland resources.

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. Housatonic's late-filed notice of intent to file its OFA will be accepted.
3. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the condition that NYC shall: (1) consult with NGS at least 90 days prior to disturbing or destroying any geodetic markers in order to plan for their relocation; and (2) consult with the PCC prior to salvage operations regarding protection of wetland resources.
4. Housatonic's OFA is due on September 12, 2001.
5. The effective date of the abandonment exemption is postponed to September 22, 2001.

⁴ Housatonic did not request CSXT to provide it with the financial data and information prescribed in 49 CFR 1152.27(a); nor did it file a petition to toll the period for submitting its OFA.

⁵ While this decision embraces the proposed discontinuance in STB Docket No. AB-55 (Sub-No. 595X), the environmental condition discussed in this decision is imposed on the proposed abandonment.

6. This decision is effective on its service date.

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

Vernon A. Williams
Secretary