

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 17X)

NEW YORK CENTRAL LINES, LLC–ABANDONMENT EXEMPTION–IN DUTCHESS
COUNTY, NY

Decided: October 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, October 5, 2006, and April 19, 2007 (April 2007 decision). The latest extension expired on September 30, 2007. The April 2007 decision also extended the deadline for CSXT, as successor by merger to NYC, to file a notice of consummation of the abandonment from June 2, 2007, until November 29, 2007.

By letter filed on September 19, 2007, the County filed a request to extend the NITU negotiating period for an additional 180 days. The County states that CSXT and the County do not anticipate being able to reach an agreement regarding the NITU prior to the expiration of the NITU deadline, but that they wish to continue negotiations. The County indicates that The Trust for Public Lands has joined the negotiations to facilitate the transaction, including the funding of the transaction. By letter filed on October 1, 2007, CSXT requests that the Board grant the County's request for a 180-day extension of the NITU negotiating period. CSXT states that it has not consummated the abandonment, has been unable to finalize negotiations with the

¹ The October 2004 decision also embraced New York and Eastern Railway, LLC–Discontinuance Exemption–in Dutchess County, NY, STB Docket No. AB-873X, and CSX Transportation, Inc.–Discontinuance Exemption–in Dutchess County, NY, STB Docket No. AB-55 (Sub-No. 652X), 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.

County, and desires to continue to negotiate with the County for interim trail use/rail banking. CSXT also requests an extension of time, until May 27, 2008, to exercise abandonment authority.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). 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 of time 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 March 28, 2008, and the consummation notice filing deadline will be extended to May 27, 2008. Given the time that has elapsed since abandonment was authorized, the parties are urged to conclude their negotiations so that further extensions are not necessary.

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

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended to March 28, 2008.
3. The authority to abandon must be exercised on or before May 27, 2008.
4. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

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).