

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: December 27, 2010

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, Mass., 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). By a series of decision, the most recent of which was served on June 18, 2010, the NITU negotiating period was extended for both the Sudbury and Framingham portions of the line until November 4, 2010. The June 18, 2010 decision also extended the deadline for NYC to file its notice of consummation until January 3, 2011.

¹ Certain prior decisions or notices in this proceeding have embraced the related AB 55 (Sub-No. 593X), CSX Transportation, Inc.—Discontinuance of Serv. Exemption—In Middlesex County, Mass. 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., FD 33388 (Sub-No. 94) (Supplemental Transaction) (STB served Nov. 7, 2003).

By letter filed on November 4, 2010, Sudbury requests a 180-day extension of the NITU negotiating period for the Sudbury portion of the line.² Sudbury states that CSXT and Sudbury have reached an agreement on the acquisition price regarding the NITU and that Sudbury has signed the Purchase and Sale Agreement as revised by CSXT. By letter filed on December 13, 2010, Framingham also requests an 180-day extension of the NITU negotiating period for the Framingham portion of the line. Framingham states that it and CSXT have obtained appraisals of the property and that they are continuing to negotiate with CSXT regarding the acquisition price of the NITU.

By letters filed on November 29, 2010 and December 21, 2010, CSXT agrees with the proposed 180-day extension requests and supports an extension of the negotiating periods until May 3, 2011. Additionally, in both letters, CSXT seeks an extension of the consummation deadline until July 2, 2011, 60 days after the expiration date of the trail use negotiation period.³

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.⁴ Under the circumstances, further extensions of the negotiating periods are warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating periods will be extended for an additional 180 days from the November 4, 2010 expiration date, until May 3, 2011. 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.

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 periods are granted.

² 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. In its reply, CSXT states that 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.

³ Under 49 C.F.R. § 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.

⁴ See Rail Aban.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

2. The NITU negotiating periods are extended until May 3, 2011, for CSXT to negotiate with Framingham as to the 3.4-mile portion of the line between milepost QBS 0.00 and milepost QBS 3.40 and with Sudbury as to the 1.4-mile portion of the line between milepost QBS 3.40 and milepost QBS 4.80.

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 2, 2011.

4. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.