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SERVICE DATE - JULY 27, 2004

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: July 26, 2004

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 from milepost QBU-00 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).<sup>1</sup> On June 28, 2002, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the Cities of Leominster and Fitchburg (Cities) to negotiate an interim trail use/rail banking agreement with applicants for the entire line. At the request of CSXT, the negotiating period was extended by decisions served December 24, 2002, June 19, 2003, and March 24, 2004. The latest extension was scheduled to expire on July 23, 2004. The March 24, 2003 decision also extended the deadline for CSXT to file its notice of consummation until September 23, 2004.

On July 22, 2004, CSXT filed a request for an extension of the NITU negotiating period until January 23, 2005, stating that the applicants have been unable to finalize negotiations with the Cities. Additionally, CSXT requests an extension of the consummation notice filing deadline until October 30, 2004.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an 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) cert. denied, 519 U.S. 1149 (1997).

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<sup>1</sup> 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.

Accordingly, the NITU negotiation period will be extended to January 23, 2005,<sup>2</sup> and the consummation notice filing deadline will be extended to October 30, 2004.

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

It is ordered:

1. CSXT's request for an extension of the negotiating period and its request for an extension of time to exercise the abandonment authority is granted.
2. The negotiating period under the NITU is extended to January 23, 2005.
3. The authority to abandon must be exercised on or before October 30, 2004.
4. This decision is effective on its date of service.

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

Vernon A. Williams  
Secretary

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<sup>2</sup> Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, STB Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).