

50058  
DO

SERVICE DATE – DECEMBER 26, 2019

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: December 23, 2019

By decision and notice of interim trail use or abandonment (NITU) served on October 12, 2001, 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, between milepost QBS 0.00 at Framingham and milepost QBS 4.80 at South Sudbury, in Middlesex County, Mass. (the Line), subject to trail use, public use, and standard employee protective conditions.

The October 2001 decision included a NITU under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29 authorizing a 180-day period for the Town of Sudbury (Sudbury) to negotiate an interim trail use/rail banking agreement with CSXT<sup>1</sup> for a 1.4-mile portion of the Line extending north from the Framingham town line to the intersection of the former Penn Central Transportation Company line at milepost QBS 4.80. By decision served on December 12, 2006, a second NITU was issued authorizing a 180-day period for the Town of Framingham (Framingham) to negotiate an interim trail use/rail banking agreement with CSXT for a 3.4-mile portion of the right-of-way between milepost QBS 0.00 at Framingham and milepost QBS 3.40 at the Framingham town line.

The negotiating periods under the NITUs have been extended a number of times, most recently to December 1, 2019. By requests filed on November 25, 2019, Sudbury and Framingham seek to extend their respective NITU negotiating periods for an additional year, until December 1, 2020. On December 11, 2019, CSXT filed a reply agreeing to the extension requests.

On December 11, 2019, the National Association of Reversionary Property Owners (NARPO) filed a letter objecting to extensions of the negotiating periods. Citing the Board's final rule in Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1) et al. (STB served Dec. 4, 2019), NARPO suggests that, at most, the Board should extend the negotiating periods until February 3, 2020, the day after the final rule becomes effective.

The final rule in Docket No. EP 749 (Sub-No. 1) modifies the Board's regulations regarding the number and duration of, and standard for granting, extensions of the NITU negotiating period (as well as the duration of the initial NITU negotiating period). However,

---

<sup>1</sup> CSXT is the successor to NYC. See CSX Corp.—Control—Conrail Inc., FD 33388 (Sub-No. 94) (STB served Nov. 7, 2003).

because those changes do not become effective until February 2, 2020, they are not applicable to Sudbury's and Framingham's pending extension requests. Sudbury and Framingham should note, though, that the changes adopted in the final rule will apply to any future extension requests.

Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); see also 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, because these requirements have been met, the NITU negotiating periods will be extended for an additional year, to December 1, 2020.

It is ordered:

1. Sudbury's and Framingham's requests for extensions of the NITU negotiating periods are granted; the NITU negotiating periods are extended until December 1, 2020.
2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.