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SERVICE DATE – AUGUST 16, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 701X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN  
VIGO COUNTY, IND.

Decided: August 13, 2010

On April 30, 2010, CSXT filed a petition seeking an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon a 3.71-mile rail line on its Southern Region, Nashville Division, CE&D Subdivision, between milepost QST 1.42 (Park Street) and milepost QST 5.13 (Spring Hill), in Terre Haute, Vigo County, Ind. The line contains the International Paper Lead, portions of the Graham Grain Lead, and the 1st Street Lead. Notice of the exemption was served and published in the Federal Register on May 20, 2010 (75 Fed. Reg. 28,315-6). Separate requests for issuance of a notice of interim trail use (NITU) were filed on June 9, 2010, by the City of Terre Haute, Ind. (City) and Vigo County (County) for two portions of the line between mileposts QST 2.77 and QST 5.13. We will grant the exemption, subject to trail use, environmental, and standard employee protective conditions.

BACKGROUND

CSXT states that it is seeking abandonment authority because the sole shipper on the line, Gavilon, Inc. (Gavilon), has decided that it no longer requires common carrier rail service to its facility. Gavilon supports the abandonment.<sup>1</sup> CSXT further states that, once abandonment has been authorized, it intends to reclassify 1.35 miles of the 3.71-mile line, between milepost QST 1.42 (Park Street) and milepost QST 2.77 (Helen Avenue) and then lease or sell that track to Gavilon. That 1.35-mile segment would be known as the Gavilon Track. CSXT adds that, after abandonment, it will continue to connect to the Gavilon Track at its northern end and the Indiana Rail Road Company will connect to the Gavilon Track near its southern end. CSXT also indicates that the City and County are interested in converting the remaining 2.36 miles of track between milepost QST 2.77 (Helen Avenue) and milepost QST 5.13 (Spring Hill) (the Trail Track), into a trail. According to CSXT, there are no shippers on the Trail Track. The Trail Track will connect to the national rail system at its southern end.

CSXT claims that abandonment will enable it to avoid operating costs, maintenance costs, and opportunity costs. CSXT adds that, post-abandonment, Gavilon will benefit from rail

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<sup>1</sup> Gavilon letter, Ex. F.

service specifically tailored to its needs, and the City and County will benefit from the creation of a trail.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will expedite regulatory action and reduce regulatory barriers to exit [49 U.S.C. §§ 10101(2) and (7)]. An exemption will also foster sound economic conditions and encourage efficient management by allowing CSXT to shed an unnecessary common carrier rail line [49 U.S.C. §§ 10101(3), (5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Gavilon, the only active shipper on the line, supports the abandonment and has decided that it no longer requires common carrier rail service to its facility. Nevertheless, to ensure that Gavilon is informed of our action, we will require CSXT to serve a copy of this decision and notice on Gavilon so that it is received by the shipper within 5 days of the service date of this decision and notice, and to certify contemporaneously to us that it has done so. There is no overhead traffic on the line. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. § 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line Railroad & The Union Pacific Railroad Company—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

CSXT has submitted an environmental and historic report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 C.F.R. § 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental and historic report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and issued an Environmental Assessment (EA) for public comment. Although SEA indicated in the EA that the right-of-way may be suitable for public use under 49 U.S.C. § 10905, no one has sought a public use

condition, and therefore none will be imposed.<sup>2</sup> The EA was served on June 29, 2010, and comments to the EA were due by July 28, 2010.

In the EA, SEA stated that the National Geodetic Survey (NGS) has advised that three geodetic station markers have been identified that may be affected by the proposed abandonment. Therefore, SEA recommended a condition requiring CSXT to consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy the geodetic station markers.

SEA also stated in the EA that CSXT submitted its historic report to the Indiana Division of Historic Preservation and Archaeology (the State Historic Preservation Offices or SHPO), pursuant to 49 C.F.R. § 1105.8(c). SEA noted that, in an April 21, 2010 reply (Ind. SHPO Ref: DHPA #9327), the SHPO stated that although it had not identified any historic buildings, structures, districts, or objects listed in or eligible for inclusion on the National Register of Historic Places, two locks (Site 12Vi801-Lock #43 and Site 12Vi802-Lock # 44) associated with the Wabash and Erie Canal are in the project area and could be impacted by the proposed abandonment. According to SEA, the SHPO requested additional information from CSXT. By letter dated May 20, 2010, CSXT stated that it was working with the SHPO regarding the requested information. In light of the SHPO's comments, however, SEA recommended a condition requiring CSXT to retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places, until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470(f).

On July 15, 2010, SEA received a letter from CSXT which included attached comments from the Indiana Department of Natural Resources (IDNR) in response to the EA. IDNR raised a number of concerns related to potential salvaging impacts to forested habitat, wetlands and streams, and recommended a suite of best management practices and other measures to avoid, minimize or mitigate these potential impacts. However, based on the predominantly urban and upland setting of the proposed action, and the limited nature and extent of salvage activities planned by the railroad, SEA concludes that forested habitat, wetland and stream impacts would not likely occur. Therefore, SEA does not recommend a condition based on IDNR's comments.

We will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As previously noted, the City and County filed requests for issuance of a NITU under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29 for two

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<sup>2</sup> Public use requests were due no later than 20 days after publication of the petition in the Federal Register, or by June 9, 2010.

portions of the line not being reclassified as private track. The City is requesting trail use for 1.21 miles of the line between milepost QST 2.77 (Helen Avenue) and milepost QST 3.98 (14th ½ Street), and the County is requesting trail use for the remaining 1.15 miles of the line between milepost QST 3.98 (14th ½ Street) and milepost QST 5.13 (Springhill Drive). The City and County have submitted statements of willingness to assume financial responsibility for the right-of-way and have acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 C.F.R. § 1152.29. By letter filed July 21, 2010, CSXT states that it is willing to negotiate with both parties for trail use.

Because both requests comply with the requirements of 49 C.F.R. § 1152.29, and CSXT is willing to enter into negotiations, NITUs will be issued for the two portions of the line between mileposts QST 2.77 and QST 5.13. The parties may negotiate agreements during the 180-day period prescribed below. If an agreement is executed with regard to either portion, no further Board action is necessary for that portion. If no agreement is reached within 180 days, CSXT may fully abandon that portion of the line, subject to the conditions imposed below. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

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

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by CSXT of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line Railroad Company & The Union Pacific Railroad Company—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979), subject to the issuance of NITUs between mileposts QST 2.77 and QST 5.13 permitting negotiations for interim trail use/rail banking as set forth below, for a period of 180 days commencing from the service date of this decision and notice (until February 14, 2011), and subject to the conditions that CSXT shall: (1) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers; and (2) (a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places, until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470(f), (b) report to SEA regarding any consultations with the SHPO and the public, and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties), until completion of the Section 106 process and the Board has removed the condition.

2. CSXT is directed to serve a copy of this decision and notice on Gaviion within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached for either portion of the line described above, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached for either portion of the line described above by February 14, 2011, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon that portion of rail line, provided the conditions imposed in this decision and notice are met.

7. An OFA under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 26, 2010, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by a \$1,500 filing fee. See 49 C.F.R. § 1002.2(f)(25).

8. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Office of Proceedings, AB-OFA."

9. Provided no OFA has been received, this exemption will be effective on September 15, 2010. Petitions to stay must be filed by August 31, 2010, and petitions to reopen must be filed by September 10, 2010.

10. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by one year from the service date, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.