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SERVICE DATE - LATE RELEASE FEBRUARY 12, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 567X)

CSX TRANSPORTATION, INC.—ABANDONMENT
EXEMPTION—IN ALLEGHENY COUNTY, PA

Decided: February 11, 1999

By petition filed October 26, 1998,¹ CSX Transportation, Inc. (CSXT), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon the remaining portion of its Lower Allegheny Branch line extending from milepost 0.00 to milepost 0.85 in Pittsburgh, together with a 0.15-mile connecting track that joins the Lower Allegheny Branch to a nearby line of the Consolidated Rail Corporation (Conrail), a total distance of 1.00 mile in Allegheny County, PA. A request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed by the City of Pittsburgh (the City). The United Transportation Union seeks the imposition of employee protective conditions. We will grant the exemption, subject to trail use, public use, and standard employee protective conditions.

BACKGROUND

The Lower Allegheny Branch is part of CSXT's Baltimore Service Lane and is accessed over trackage rights from Conrail's Etna Yard in Pittsburgh and Conrail's Preble Avenue Industrial Track via the 0.15-mile connecting track owned by CSXT.² The only shipper located on the line, Allegheny County Sanitary Authority (Alcosan), received a total of 18 carloads of chlorine during the last 3 years.³ Due to an expansion project at Alcosan's facility, the rail siding connecting the facility to CSXT's line has been removed. According to CSXT, Alcosan plans to construct a rail

¹ Notice of the filing was served and published in the Federal Register on November 13, 1998 (63 FR 63524).

² In CSX Transportation, Inc.—Abandonment Exemption—In Allegheny County, PA, Docket No. AB-55 (Sub-No. 380X) (ICC served Sept. 19, 1994), CSXT was granted an exemption to abandon a 1.47-mile connecting segment of the Lower Allegheny Branch extending between milepost 0.85 and milepost 2.32 in Pittsburgh. A NITU for that portion of the Lower Allegheny Branch was served on October 18, 1994, and that part of the line was subsequently sold to the City for use as a trail.

³ In 1996, 1997, and 1998, Alcosan received 7, 8, and 3 carloads, respectively. CSXT submits that, since January 16, 1998, Alcosan has used tank truck service to receive its shipments of chlorine.

siding to connect its facility to an adjacent Conrail line within the next few years or whenever traffic volumes increase sufficiently to justify the construction costs.⁴ CSXT states that it served a copy of the petition on Alcosan.

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 reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving CSXT of the costs of owning and maintaining the line and allowing it to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power because the sole shipper on the line has alternative transportation service.⁵ Nevertheless, to ensure that the shipper is informed of our action, we will require CSXT to serve a copy of this decision on Alcosan within 5 days of the service date of this decision and certify to us that it has done so.

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 in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

CSXT has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning

⁴ CSXT notes that the Conrail line will be operated by Norfolk Southern Railway Company after the parties consummate the transaction approved in CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Railroad Corporation, STB Finance Docket No. 33388 (STB served July 23, 1998).

⁵ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on December 24, 1998, recommending that no environmental or historic conditions be imposed on the abandonment.

No comments to the EA were filed by the January 25, 1999 due date. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

The City requests that interim trail use/rail banking be imposed under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) for the line segment between milepost 0.0 and milepost 0.85. It has submitted a statement of willingness to assume financial responsibility for the right-of-way, and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. By letter filed January 15, 1999, CSXT states that it is willing to negotiate with the City for interim trail use. The City's request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to enter into negotiations. Therefore, we will issue a NITU for the line segment between milepost 0.0 and milepost 0.85. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. As noted above, the City has also requested that a 180-day public use condition be imposed covering the line segment between milepost 0.0 and milepost 0.85. The City requests that CSXT be precluded from: (1) disposing of the rail corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels. The City is developing a system of riverfront trails and submits that this line segment would provide a logical extension to the trail currently under construction on the adjoining CSXT line segment. The City indicates that the 180-day time period is needed to review title information and negotiate with CSXT.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The City has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition covering the 0.85-mile segment also will be imposed, commencing with the effective date of this decision and notice. If a trail use agreement is reached on a portion of the right-of-way, CSXT must

keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 U.S.C. 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

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 of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and the conditions that CSXT shall: (1) leave intact all of the right-of-way for the line segment between milepost 0.0 and milepost 0.85, including bridges, trestles, culverts, and tunnels (but not track and track materials) for a period of 180 days from the effective date of this decision and notice to enable any state or local governmental agency or any other interested person to negotiate the acquisition of the line for public use; and (2) comply with the interim trail use/rail banking procedures set forth below.
2. CSXT is directed to serve a copy of this decision on Alcosan within 5 days after the service date of this decision and certify to the Board that it has done so.
3. If an interim trail use/rail banking agreement is reached for the line segment between milepost 0.0 and milepost 0.85, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, 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 the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use 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 by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by February 22, 1999, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 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 March 14, 1999. Petitions to stay must be filed by March 1, 1999, and petitions to reopen must be filed by March 9, 1999.

10. Pursuant to the provisions of 49 CFR 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 February 12, 2000 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 not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams
Secretary