

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 703X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN CHESTERFIELD
AND DARLINGTON COUNTIES, S.C.

Digest:¹ CSX Transportation, Inc. (CSXT), is permitted to terminate service over, and to eliminate, a 2.71-mile rail line in Chesterfield and Darlington Counties, S.C. CSXT plans to sell or lease the line to the only shipper located on the line, for that shipper's private use; however, other parties may offer to buy or subsidize the line for continued rail service.

Decided: January 19, 2011

BACKGROUND

By petition filed on October 1, 2010, 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 a 2.71-mile line of railroad on its Southern Region, Florence Division, Hamlet Subdivision, between milepost SJ 304.75, at Tabernacle Road, and milepost SJ 307.46, at Bobo Newsome Highway, in Chesterfield and Darlington Counties, S.C. (the line). Notice of the exemption was served and published in the Federal Register on October 21, 2010 (75 Fed. Reg. 65,048-49).

CSXT states that it seeks to abandon the line for purposes of reclassifying the line as excepted spur track under 49 U.S.C. § 10906 and subsequently selling or leasing the line to Progress Energy Carolinas, Inc. (PEC), the sole shipper on the line. According to CSXT, PEC has expressed interest in acquiring and maintaining the line to allow for expanded intra-plant operations and has executed a letter of non-opposition to the proposed abandonment provided that CSXT sells or leases the line to PEC after the abandonment is consummated and the line is reclassified as excepted spur track (Exhibit F of CSXT's petition). According to CSXT, sale or lease of the line to PEC would allow PEC to perform intra-plant operations on its own, without incurring a common carrier obligation. CSXT contends that, because the line is no longer needed for common carrier purposes, retention of the line as regulated track is not necessary.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Moreover, CSXT states that it will avoid the costs of operating and maintaining the line and also avoid opportunity costs for the line.

To facilitate the reclassification of the line as excepted track and its subsequent transfer to PEC upon consummation of the abandonment, CSXT requests that the Board condition the abandonment upon CSXT and PEC reaching an agreement providing for the sale or lease of the line to PEC within 30 days after CSXT has consummated the abandonment and reclassified the line as excepted track. CSXT also seeks an exemption from the offer of financial assistance (OFA) provisions of 49 U.S.C. § 10904. We will grant the exemption from 49 U.S.C. § 10903, subject to environmental and standard employee protective conditions, but will deny both CSXT's requested condition and the request for exemption from 49 U.S.C. § 10904.

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 minimize the need for Federal regulatory control over the rail transportation system and will reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). An exemption will also foster sound economic conditions and encourage efficient management by permitting the rationalization of an unnecessary common carrier rail line, consistent with 49 U.S.C. §§ 10101(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. In its letter of non-opposition, PEC, the only shipper on the line, indicates that it does not object to the proposed transaction, provided that CSXT sells or leases the line to PEC upon consummation of the abandonment and reclassification of the line. No opposition by any other entity to the abandonment has been received. In view of both the carrier's and shipper's stated intent that this line will be transferred to the shipper, removed from common carrier service and operated as spur track for the shipper's use, we will treat this abandonment request as unopposed. To ensure that PEC is informed of our action, however, we will require CSXT to serve a copy of this decision on PEC so that it is received by PEC within 5 days of the service date of this decision and to certify contemporaneously to the Board that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Exemption from § 10904. Exemptions from the OFA process at 49 U.S.C. § 10904 have been granted from time to time, when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service. See, e.g., Union Pac. R.R.—Aban. Exemption—in Pima Cnty., Ariz., AB 33 (Sub-No. 141X) (STB served Feb. 16, 2000). Here,

CSXT has not justified an exemption from the OFA process, as it has not demonstrated that the right-of-way is needed for a valid public purpose. Rather, CSXT seeks the exemption simply to facilitate a sale or lease of the line to PEC for its private use. Because we find no reasonable basis for departing from Congress's objective of providing an opportunity for maintaining common carrier rail service as part of the abandonment process, CSXT's request for an exemption from the OFA provisions at 49 U.S.C. § 10904 will be denied, and the OFA process will be allowed to proceed. See, e.g., CSX Transp.—Aban. Exemption—in Marion Cnty., Ind., AB 55 (Sub-No. 702X) (STB served Aug. 12, 2010) (denying a requested exemption from the OFA process to facilitate sale of a line to the shipper for its private use). Nevertheless, given the apparent lack of need for this line by any shipper other than PEC, any person seeking to file an OFA must provide evidence of how this line will be turned into a viable common carrier line serving shippers other than PEC. See id.

CSXT's Requested Condition. To facilitate the transfer of the line to PEC upon consummation of the abandonment and reclassification of the line as excepted spur track, CSXT requests that the Board condition the abandonment upon CSXT and PEC reaching an agreement providing for the sale or lease of the line from CSXT to PEC within 30 days after CSXT has consummated the abandonment and reclassified the line. This request will be denied. Once abandonment of a line has been consummated, that line is no longer a part of the national rail network, and its disposition is outside the Board's authority. If no party files a bona fide OFA, CSXT may dispose of the line as it chooses, including its proposed reclassification of the line as excepted track and sale or lease of the line to PEC.

Employee protection. 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—Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham and Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Environmental review. 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 Office of Environmental Analysis (OEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA served an environmental assessment (EA) on November 30, 2010. In the EA, OEA recommended that one condition be imposed on any decision granting abandonment authority.

In the EA, OEA states that the National Geodetic Survey (NGS) identified one geodetic station marker that may be disturbed by the proposed abandonment. Therefore, OEA recommends that CSXT be required to notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy this marker to plan for the possible relocation of the geodetic station marker by NGS.

Comments on the EA were due by December 30, 2010. No comments on the EA were received. Accordingly, we will impose the environmental condition recommended by OEA in the EA. Based on OEA's recommendation, we conclude that the proposed abandonment, if implemented, conditioned as described in this paragraph, 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—Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham and Bonneville Counties, Idaho, 360 I.C.C. 91 (1979), and subject to the condition that CSXT shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy the geodetic station marker identified by NGS to plan for the possible relocation by NGS of this marker.

2. CSXT's request that the abandonment be conditioned upon CSXT and PEC reaching an agreement providing for the sale or lease of the line to PEC within 30 days after CSXT has consummated the abandonment and reclassified the line as excepted track is denied.

3. CSXT's request for exemption from the provisions of 49 U.S.C. § 10904 is denied.

4. CSXT is directed to serve a copy of this decision on PEC so that it is received by PEC within 5 days after the service date of this decision and to certify contemporaneously to the Board that it has done so.

5. 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 January 28, 2011, 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 the filing fee, which currently is set at \$1,500. See 49 C.F.R § 1002.2(f)(25).

6. 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.”**

7. Provided no OFA has been received, this exemption will be effective on February 18, 2011. Petitions to stay must be filed by February 3, 2011, and petitions to reopen must be filed by February 14, 2011.

8. 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 January 19, 2012, 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 Nottingham, and Commissioner Mulvey.