

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 746X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN  
GRANT COUNTY, W. VA.

Digest:<sup>1</sup> This decision allows CSX Transportation, Inc. to end its common carrier obligation to provide freight rail service over an approximately 0.66-mile rail line in Grant County, W.Va.

Decided: February 19, 2016

On November 17, 2015, CSX Transportation, Inc. (CSXT), filed a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 to abandon an approximately 0.66-mile rail line between milepost BUA 15.72 and milepost BUA 16.38, the end of the line, on the Mt. Storm Railroad Track, in Grant County, W.Va. (the Line).<sup>2</sup> Notice of the filing was served and published in the Federal Register on December 7, 2015 (80 Fed. Reg. 76,066). The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

CSXT states that the Virginia Electric and Power Company (VEPCO) owns the track and land located between milepost BUA 0.0 and the end of the track at milepost BUA 16.38 in Grant County, W. Va. According to CSXT, VEPCO leases the line to CSXT to provide rail service to VEPCO's Mount Storm Power Station.<sup>3</sup> CSXT further states that it is the only common carrier operating over the Line, and VEPCO is the only shipper served on the Line. VEPCO operates over private track to the east of milepost BUA 16.38.

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<sup>1</sup> 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).

<sup>2</sup> On February 5, 2016, CSXT filed a Request for Expedited Decision, requesting that the Board issue a decision by February 20, 2016, so that CSXT can consummate the abandonment and construction activities can begin on March 1, 2016.

<sup>3</sup> According to CSXT, the Western Maryland Railway Company, a predecessor to CSXT, filed an application with the Interstate Commerce Commission on May 2, 1963, to lease the line from VEPCO in Docket No. 22589.

According to CSXT, it is seeking abandonment authority<sup>4</sup> to terminate its common carrier obligation over the Line at VEPCO's request. CSXT states that VEPCO and CSXT have agreed to amend the lease to exclude the final 0.66 miles (the Line) from the lease so that VEPCO can construct a new coal yard and rapid coal dumper that VEPCO will operate. CSXT further states that it will continue to provide common carrier service to VEPCO following the proposed abandonment beginning at milepost BUA 15.72, while VEPCO adds the newly abandoned track to the east of that point to its existing private trackage.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned or service discontinued without the Board's prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds 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 of the proposed abandonment is not necessary to carry out the rail transportation policy in this case. An exemption would minimize the unnecessary expense associated with the preparation and filing of a formal abandonment application, expedite regulatory decisions, and reduce regulatory barriers to exit. 49 U.S.C. § 10101(2), (7), (15). Since CSXT would continue to serve the only shipper on the Line, there will be no loss of rail service. Additionally, other aspects of the rail transportation policy would not be adversely affected. For example, competition and the continuation of a sound rail transportation system would not be affected because the public will not be deprived of any needed rail services.

We also find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power.<sup>5</sup> As explained earlier, the only shipper on the Line, VEPCO, supports the proposed abandonment. CSXT is seeking to abandon the Line at VEPCO's request so that VEPCO can expand its facility. Moreover, CSXT would continue to serve VEPCO following the proposed abandonment.<sup>6</sup>

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<sup>4</sup> Although CSXT leases rather than owns the Line, the railroad's termination of service removes the right of way from Board jurisdiction, and its filing is therefore styled as an abandonment.

<sup>5</sup> Given our finding under § 10502(a)(2)(B), we need not determine whether the proposed abandonment is limited in scope under 49 U.S.C. § 10502(a)(2)(A).

<sup>6</sup> The Board recently denied a petition where a carrier sought to extinguish its common carrier obligation and provide contract service to multiple shippers in Energy Solutions, LLC—Abandonment Exemption—in Anderson & Roane Counties, Tenn., AB 1128X (STB served Oct. 13, 2015). In that case, Energy Solutions had failed to demonstrate that further regulation was not necessary to carry out the Rail Transportation Policy (e.g., ensuring the continuation of a sound rail transportation system to meet the needs of the public (49 U.S.C. § 10101(4)), and that  
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Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its 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 upon CSXT the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental Review. CSXT submitted an environmental report and notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. §§ 1105.7-1105.8, 1105.11. Based on CSXT's environmental report and independent analysis, the Board's Office of Environmental Analysis (OEA) prepared an Environmental Assessment (EA) that was issued for public review and comment on January 15, 2016. The EA did not recommend that any environmental or historic preservation conditions be imposed on any decision granting abandonment authority.

Comments on the EA were due by February 16, 2016.<sup>7</sup> OEA issued a Final EA on February 19, 2016, that did not recommend any environmental or historic preservation conditions. Therefore, the Board will not impose any such conditions.

This action will not significantly impact 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.

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there would be any economic burden as a result of continued common carrier service. This case does not present the same concerns as VEPCO is the only shipper on the Line, the only effect of the abandonment is to allow VEPCO to expand its plant, and CSXT's common carrier service to VEPCO would continue after the abandonment.

<sup>7</sup> The Draft EA erroneously stated that the deadline for comments was February 1, 2016. On February 11, 2016, OEA issued a Notice to the Parties extending the deadline to February 16, 2015.

2. An Offer of Financial Assistance (OFA) under 49 C.F.R. § 1152.27(c)(1) to subsidize continued rail service must be received by the railroad and the Board by February 29, 2016, 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 of \$1,600. See 49 C.F.R. § 1002.2(f)(25).<sup>8</sup>

3. OFAs for subsidy and related correspondence to the Board must refer to this proceeding. The following notation must be typed in boldface on the lower left-hand corner of the envelope: “Office of Proceedings, AB-OFA.”

4. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on March 1, 2016.

5. Petitions to stay must be filed by February 26, 2016. Petitions to reopen must be filed by February 29, 2016.

6. Pursuant to 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 February 19, 2017, 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 one-year period, the notice of consummation must be filed no later than 60 days after the satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

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<sup>8</sup> Because CSXT’s interest in the Line is by lease, an OFA may only seek to subsidize CSXT’s operations on the Line for up to a year. Also, consistent with our precedent, and given the apparent lack of need for the Line by any shipper other than VEPCO, any person seeking to file an OFA must provide evidence that there is some shipper other than VEPCO that would make use of common carrier service. See, e.g., CSX Transp.—Aban. Exemption—in Washington Cty., Md., AB 33 (Sub-No. 727X) (STB served Oct. 24, 2013); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cty., Iowa, AB 33 (Sub-No. 300X) (STB served Jan. 20, 2012); CSX Transp.—Aban. Exemption—in Chesterfield & Darlington Ctys., S.C., AB 55 (Sub-No. 703X) (STB served Jan. 19, 2011).