

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 697X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN GLYNN COUNTY, GA

Decided: July 8, 2009

By petition filed on May 22, 2009, 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 0.31-mile rail line on its Southern Region, Jacksonville Division, Brunswick Subdivision, between milepost AOB 534.36 and milepost AOB 534.67 in Brunswick, Glynn County, GA (the line).¹ Notice of the filing was served and published in the Federal Register on June 11, 2009 (74 FR 27859-60). The deadline for replies to the petition was July 1, 2009, and none were filed. CSXT has requested expedited consideration of the exemption petition, including effectiveness of the exemption no later than August 1, 2009. We will grant the exemption and grant CSXT's request for expedited action.

BACKGROUND

The line is at the end of CSXT's Brunswick Subdivision in Brunswick, GA. CSXT states that there are no shippers on the line and that it does not handle overhead traffic.² Prior to April 2008, CSXT used the line and a parallel runaround to serve Glynn Iron. CSXT states that a portion of the track on the line was removed after an April 2008 derailment and that, shortly after the damaged track was removed, Glynn County removed the parallel runaround track without CSXT's prior consent as a precursor to constructing a road to reach a newly constructed public school on the east side of the line. After the track was removed from the line, CSXT developed a new operation to serve Glynn Iron. CSXT states that the new operation provides a similar level

¹ CSXT previously sought to abandon the line through a notice of exemption filed on May 1, 2009. In a decision served on May 14, 2009, the Board rejected the notice based on evidence that the line did not qualify for the class exemption. See CSX Transportation, Inc.–Abandonment Exemption–In Glynn County, GA, STB Docket No. AB-55 (Sub-No. 685X) (STB served May 14, 2009).

² CSXT states that about 0.2 miles south of the line is Glynn Iron & Metals (Glynn Iron), an active shipper that CSXT now serves and will continue to serve (via another line) if the line is abandoned. Also, CSXT states that the last shipper located on the line stopped using rail service over 5 years ago.

of service to Glynn Iron as that previously provided over the line, and that abandonment of the line will not result in any further operational changes. Finally, CSXT states that abandonment authority is warranted because retention of the line would require both CSXT and Glynn County to incur unnecessary costs due to the new road leading to the school. CSXT argues that retention of the line would force Glynn County to construct two grade crossings and install protective devices including flashing light signals, bells and automated gates. CSXT states that it would also incur inspection and maintenance costs for a line with no traffic.

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 of this transaction under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment application, 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 cost of owning and maintaining a line no longer used and allowing it to apply its assets more productively on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected. Under the proposed exemption, CSXT will be able to consummate the abandonment more expeditiously and allow for Glynn County to construct a road to the new school in time for the upcoming academic year. Also, we will grant CSXT's request for expedited effectiveness of the exemption.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. Abandonment of the rail line is not opposed. The only shipper near the line, Glynn Iron, is now served by another CSXT line. Glynn Iron's service will not be impacted by abandonment of the line. There is no overhead traffic on the line and no shipper located on the line has moved traffic over the line in at least 5 years. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

As previously mentioned, to ensure that adequate time is provided before the beginning of the new school year for Glynn County to construct the school access road post-abandonment, CSXT has requested that the exemption be made effective on an expedited basis. Accordingly, in order for the abandonment to take effect by August 1, we must grant an exemption from the time requirements of the offer of financial assistance (OFA) procedures of 49 U.S.C. 10904.³

³ Under 49 U.S.C. 10904(c), a party has 4 months (120 days) from the filing of the petition for exemption in which to file an offer to purchase a line through the OFA procedures.

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Therefore, the Board, on its own motion, will set the time limit for filing an OFA at 10 days after the service of this decision. Finally, in order to expedite the effective date of the abandonment, the Board will, on its own motion, shorten the time period for petitions to stay this decision. Petitions to stay will be due no later than 5 days before the effective date of this decision.

The evidence of record establishes that this partial exemption from 49 U.S.C. 10904 meets the criteria of 49 U.S.C. 10502. Applying the full 120-day period in our OFA statute in this instance is not necessary to carry out the rail transportation policy. Moreover, this action will minimize the need for Federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. For the same reasons cited above, regulation is not necessary to protect shippers from an abuse of market power.

Offerors are reminded that the OFA process is designed for the purpose of providing continued rail service. The Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic. Here, where the abandoning carrier has been granted an exemption from the timing provisions of section 10904, where there has been no active shipper on the line for at least 5 years, and where the property is proposed to be used for a public purpose, any person who wishes to oppose the exemption from the OFA provisions or who intends to file an OFA should address one or more of the following: whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the line being abandoned or as manifested by other evidence of immediate and significant commercial need; whether there is community support for continued rail service; whether acquisition of freight operating rights would interfere with current and planned transit services; and whether continued rail service is operationally feasible.

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 environmental and historic reports 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 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified

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CSXT's petition was filed on May 22, 2009, which means that the statutory deadline for an OFA is September 19, 2009.

the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on June 16, 2009.⁴

In the EA, SEA states that comments to the proposed abandonment and salvage activities were received from the City of Brunswick, the United States Department of Agriculture, Natural Resources Conservation Service, the United States Fish and Wildlife Service, the United States Army Corps of Engineers, and the Georgia Department of Natural Resources, Coastal Resources Division. Based on these comments, SEA stated in the EA that it does not believe that salvage activities would cause significant environmental impacts. Therefore, SEA has recommended that no environmental conditions be placed upon any decision granting CSXT abandonment authority, and that no further consultation with the above-mentioned parties is necessary.

The EA also notes that CSXT contacted the Georgia Department of Natural Resources, Historic Preservation Division (SHPO) pursuant to 49 CFR 1105.8. The SHPO submitted comments stating that the proposed abandonment would not affect any known archaeological sites or historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register). SEA states in the EA that it concurs with the SHPO and has determined that the proposed abandonment will not adversely affect properties listed in or eligible for inclusion in the National Register.

Comments to the EA were due by July 7, 2009. No comments to the EA were received. Based on SEA's recommendation, the proposed abandonment will not significantly affect either the quality of the human environment or the conservation or energy resources. Accordingly, the Board's decision granting abandonment authority will not be subject to any environmental or historic preservation conditions.⁵

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903-04 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).

2. 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 July 17, 2009, subject to time extensions authorized

⁴ In light of CSXT's request for expedited action, SEA issued the EA earlier than its usual timeframe in petition proceedings. Also, SEA shortened the comment period from the normal 30 days to 20 days.

⁵ Public use requests were due no later than 20 days after publication of the notice in the Federal Register, or by July 1, 2009. Although SEA indicates 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 none will be imposed.

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 the filing fee, which currently is set at \$1,500. See 49 CFR 1002.2(f)(25).

3. 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.”**

4. Provided no OFA has been received, this exemption will be effective on July 19, 2009. Petitions to stay must be filed by July 14, 2009, and petitions to reopen must be filed by July 24, 2009.

5. 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 July 9, 2010, 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, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary