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SERVICE DATE – MARCH 18, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 747X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN BEN HILL COUNTY, GA.

Digest:¹ This decision allows CSX Transportation, Inc., to end its common carrier obligation to provide freight rail service over an approximately 0.23-mile rail line in Fitzgerald, Ben Hill County, Ga.

Decided: March 15, 2016

By petition filed on November 30, 2015, 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 an approximately 0.23-mile rail line between milepost SLA 660.39 and the end of the line at milepost SLA 660.62, in Fitzgerald, Ben Hill County, Ga. (the Line). Notice of the exemption was served and published in the Federal Register on December 18, 2015 (80 Fed. Reg. 79,134). The Board will grant the exemption subject to standard employee protective conditions.

BACKGROUND

According to CSXT, there is currently one customer, Modern Dispersions, Inc. (Modern), located at the end of the Line. CSXT states that it is seeking to abandon the Line so that it can sell it to Modern, which plans to redevelop its property and expand its pellet shipping operations. Upon a grant of abandonment authority and consummation, CSXT states, the Line will be sold to Modern for its use in expanding its shipping facility. CSXT states that it plans to leave the tracks and materials in place and that Modern plans to use the Line to load and unload rail cars on its own property through a private side track agreement. CSXT states that it will continue to meet Modern's common carrier requirements and projects an increase in volume based on Modern's plans. CSXT states that Modern does not object to abandonment of the Line. The Fitzgerald and Ben Hill County Development Authority supports the proposed transaction. (Pet., Ex. B, Attachment 3.)

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).

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned 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.

In this case, detailed scrutiny of the proposed abandonment 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 would reduce regulatory barriers to exit. 49 U.S.C. § 10101(2), (7), (15). Because CSXT would continue to serve Modern, which is the Line's only shipper and does not object to abandonment of the Line, there would be no loss of rail service. According to the petition, Modern intends to acquire the track after the abandonment to expand and redevelop its rail facilities and to retain rail-served property. Allowing the transaction to proceed and the shipper to expand its facilities is expected to increase traffic volume, which would foster sound economic conditions in transportation. 49 U.S.C. § 10101(5). Other aspects of the rail transportation policy would not be adversely affected by the use of the exemption process. For example, competition and the continuation of a sound rail transportation system would not be affected because the public would not be deprived of any needed rail services.

Additionally, regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power.² As explained, Modern is the only shipper on the Line and does not object to the proposed abandonment. CSXT is seeking to abandon the Line so that Modern can redevelop and expand its facility. Moreover, CSXT would continue to serve Modern following the proposed abandonment. Nevertheless, to ensure that Modern is informed of our action, we will require CSXT to serve a copy of this decision on Modern within five days of the service date of this decision and to certify contemporaneously to the Board that it has done so.

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 on CSXT the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Environmental review. CSXT submitted environmental and historic reports with its petition and notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed

² Because regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed abandonment is limited in scope.

abandonment. See 49 C.F.R. §§ 1105.7, 8 & 11. The Board's Office of Environmental Analysis (OEA) has examined the reports, verified the data they contain, and analyzed the probable effects of the proposed action on the quality of the human environment.

In an Environmental Assessment (EA) issued on January 29, 2016, OEA concluded that, as proposed, the abandonment of the Line would not significantly affect the quality of the human environment and recommended that no environmental conditions be imposed on any decision granting abandonment authority.

Comments on the EA were due by February 29, 2016, and no comments were filed. OEA issued a Final EA on March 2, 2016, that does not recommend any environmental conditions. We agree with OEA's analysis and recommendations and will not impose environmental 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, the Board exempts 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.

2. CSXT is directed to serve a copy of this decision on Modern within five days of the service date of this decision and to certify contemporaneously to the Board that it has done so.

3. An Offer of Financial Assistance (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 March 28, 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).³

4. 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."**

³ Consistent with our precedent, and given the apparent lack of need for the Line by any shipper other than Modern, any person seeking to file an OFA must provide evidence that there is some shipper other than Modern 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).

5. Provided no OFA has been received, this exemption will be effective on April 17, 2016.

6. Petitions to stay must be filed by April 1, 2016. Petitions to reopen must be filed by April 12, 2016.

7. 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 March 18, 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 satisfaction, expiration, or removal of the legal or regulatory barrier.

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