

SERVICE DATE – DECEMBER 6, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 725X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—  
IN RALEIGH COUNTY, W. VA.

Digest:<sup>1</sup> CSX Transportation, Inc. is permitted to stop providing rail service over approximately 13.5 miles of rail line owned by Norfolk Southern Railway Company that is located in Raleigh County, W. Va.

Decided: December 4, 2012

By petition filed on August 22, 2012, 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 discontinue service over approximately 13.5 miles of rail line between milepost WG 12.0 near Helen and milepost WG 25.5 at McVey in Raleigh County, W. Va. (the Line). The Line is owned by Norfolk Southern Railway Company (NSR) and has been operated by CSXT since 1996 under lease from NSR.<sup>2</sup> Pursuant to 49 U.S.C. § 10502(b), the Board served and published a notice in the Federal Register on September 11, 2012 (77 Fed. Reg. 55,899), instituting an exemption proceeding. No comments were filed in response to the notice. We will grant the exemption subject to standard employee protective conditions.

BACKGROUND

In its petition, CSXT states that, in a letter dated May 16, 2011, NSR invoked its termination rights under the lease. According to CSXT, NSR may, upon a written 30-day notice, terminate the lease at its sole discretion provided that NSR offers trackage rights or another appropriate agreement to CSXT that would allow CSXT to continue operating between milepost WG 12.0 near Helen and milepost WG 23.6 at Pemberton, W. Va. (known as the Pemberton Line), for CSXT's own purposes and with its own trains and crews. In a decision served on August 10, 2012, pursuant to a written trackage rights agreement dated May 18, 2012, between the parties, CSXT was authorized to acquire overhead and local trackage rights from NSR to

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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> See CSX Transp. Inc.—Lease & Operation Exemption—Norfolk & W. Ry., FD 32768 (ICC served Oct. 27, 1995). According to CSXT, the lease was amended in 1996.

continue operating over the Pemberton Line, a distance of 11.6 miles.<sup>3</sup> CSXT states that NSR will resume providing rail service on the entire 13.5 miles of the Line but that, pursuant to the lease, CSXT will retain the right and obligation to continue to provide common carrier service on the Line until it receives discontinuance authority from the Board and consummates that authority. Therefore, no shipper will lose rail service on the Line.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the Board's 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 CSXT's proposed discontinuance under 49 U.S.C. § 10903 is not necessary here to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will expedite regulatory action and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). Consistent with 49 U.S.C. §§ 10101(5) and (9), an exemption will also foster sound economic conditions and encourage efficient management by quickly allowing CSXT to discontinue its common carrier obligation to provide service under the lease and by allowing NSR to resume operations on the Line it owns, with CSXT also providing overhead and local trackage rights service over a portion of the Line as agreed by the parties. 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.<sup>4</sup> NSR will resume operations on the Line in place of CSXT, with CSXT continuing to provide service over most of the Line via trackage rights. No shipper has opposed the proposed discontinuance of CSXT's service. Nevertheless, to ensure that shippers on the Line are informed of our action, we will require CSXT to serve a copy of this decision on them so that it is received by them within five days of the service date of this decision and to certify contemporaneously to the Board that it has done so.

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 the employee protective conditions set forth

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<sup>3</sup> See CSXT Transp., Inc.—Trackage Rights Exemption—Norfolk S. Ry., FD 35626 (STB served Aug. 10, 2012).

<sup>4</sup> Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because CSXT seeks a discontinuance of service in this proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the Line for continued rail service under 49 U.S.C. § 10904 (although the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. This proceeding is also exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b). Therefore, this decision 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, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by CSXT of its operations over the above-described line, subject to 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).

2. CSXT is directed to serve a copy of this decision on the Line's shippers so that it is received by them within five days after the service date of this decision and to certify contemporaneously to the Board that it has done so.

3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by December 17, 2012, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). Any 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 \$1,600. See 49 C.F.R. § 1002.2(f)(25).

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.”**

5. Petitions to stay must be filed by December 21, 2012. Petitions to reopen must be filed by December 31, 2012.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on January 5, 2013.

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