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SERVICE DATE - OCTOBER 17, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 634X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN MONROE
COUNTY, IN

Decided: October 16, 2003

By petition filed on July 1, 2003, 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 2.95-mile line of railroad, in CSXT's Western Region, Great Lakes Division, extending from milepost 00Q-219.55 to milepost 00Q-222.50, in Bloomington, Monroe County, IN (the line). Notice of the petition was served and published in the Federal Register (68 FR 43255) on July 21, 2003, instituting an exemption proceeding. A request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by the City of Bloomington, acting by and through its Redevelopment Commission (Bloomington). The exemption will be granted, subject to trail use, public use, historic preservation, and standard employee protective conditions.

BACKGROUND

According to CSXT, there are currently 3 shippers located on the line: the Herald Times, Black Lumber Company, Inc. (Black) and Bender Lumber Company (Bender). CSXT states that, The Herald Times received 52 carloads of paper and newsprint in 2000, 61 carloads in 2001, and 67 carloads in 2002. CSXT states that, although The Herald Times is currently exclusively served by rail, it has agreed to convert its facilities so that it may receive shipments by truck.

According to CSXT, both Black and Bender are light users of rail service. Black received 31 carloads of lumber products in 2000, 22 carloads in 2001, and 23 carloads in 2002, and Bender did not receive any carloads of lumber products in 2000 or 2001 and received only 8 carloads in 2002. CSXT contends that these shippers currently use both rail and motor carrier transportation and that alternative transportation opportunities are available in the form of increased use of motor carriers and the use of a public team track facility located in the area.

CSXT states that its customers have been apprised of its filing and includes letters from The Herald Times and Bender stipulating that they do not oppose the abandonment. CSXT has provided

an economic analysis of the line. This analysis shows a profit in the base year, 2002, of \$38,140. However, once return on value is taken into account, the opportunity cost of running the line in the forecast and subsidy years is predicted to be \$56,844 per year.

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.

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 expedite regulatory decisions and 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 from the costs of maintaining and operating an underutilized line of railroad [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.¹ It appears that none of the shippers oppose the exemption. The Herald Times, Black and Bender make minimal use of the line and apparently now use, or, in the case of the Herald Times, will use in the future, motor carrier alternatives. Additionally, all three shippers will have a transloading opportunity available to them. Nevertheless, to ensure that The Herald Times, Black, and Bender are informed of the Board's action, CSXT will be required to serve a copy of this decision and notice on these shippers within 5 days of the service date and certify to the Board that it has done so. Given the market power finding, the Board need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), the Board's exemption authority may not be used to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979) will be imposed.

CSXT has submitted environmental and historic reports with its petition and has notified the appropriate Federal, state, and local agencies as required by the Board's environmental rules. See 49

¹ While the line is profitable, it is, according to CSXT, underutilized, and substantial opportunity costs are involved.

CFR 1105.7(b). The Board's Section of Environmental Analysis (SEA) reviewed and investigated the record in this proceeding, and served an environmental assessment (EA) on August 29, 2003.

SEA notes that the U.S. Environmental Protection Agency (EPA), Region 5, in comments filed in response to the EA, has expressed concerns about the removal and salvage methods to be used by CSX during the proposed abandonment, the final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills from construction equipment, and potential revegetation opportunities for the right-of-way. Accordingly, SEA recommends that, prior to commencement of any salvage activities on the line, CSX contact EPA Region 5 concerning removal and salvage methods, final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills, and potential revegetation activities to be utilized during abandonment activities.

The EA notes that the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology (SHPO) indicates that it has not completed its assessment of the potential impact of this action on historic resources. Accordingly, SEA recommends that a condition be placed on any Board decision granting abandonment authority that would require CSXT to take no steps to alter the historic integrity of the right-of-way until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

No other comments to the EA were filed by the September 25, 2003 due date. Accordingly, the condition recommended by SEA will be imposed. The proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As indicated, Bloomington timely filed on August 6, 2003, a request for issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and a request for public use under 49 U.S.C. 10905. Bloomington submitted a statement of willingness to assume financial responsibility for the management of, for indemnification of the railroad against any potential liability arising out of the transfer and use of, and for payment of any and all taxes that may be levied or assessed against, the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service, as required at 49 CFR 1152.29. CSXT has indicated that it is willing to negotiate for interim trail use. Because the request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to enter into trail use negotiations, a NITU will be issued as requested. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, subject to the conditions

imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that, if abandonment and salvage of the line does take place, the right-of-way may be suitable for other public use.² Bloomington requests imposition of a 180-day public use condition to commence negotiations with CSXT. Specifically, Bloomington requests that CSXT be precluded from: (1) disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels.

Persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions has been established, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. Bloomington has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the line to be abandoned, commencing from the effective date of this decision and notice, to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use. A public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with Bloomington, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

² Bloomington states that the line, when converted to a public trail, would create a safe, easy route for bicyclists and pedestrians to access downtown Bloomington from the south and west portions of the city without adding to traffic congestion, as well as providing recreational benefits.

It is ordered:

1. Under 49 U.S.C. 10502, an exemption from the prior approval requirements of 49 U.S.C. 10903 for the abandonment by CSXT of the above-described line is granted, subject to the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that CSXT shall: (1) leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (except for track, ties, and signal equipment) for a period of 180 days from the effective date of this decision, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; (2) comply with the terms and conditions for implementing interim trail use/rail banking as set forth below; (3) contact EPA Region 5 concerning removal and salvage methods, final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills, and potential revegetation activities to be utilized during abandonment activities prior to commencement of any salvage activities it may conduct on the line; and (4) take no steps to alter the historic integrity of the right-of-way until completion of the section 106 process of the NHPA.

2. CSXT is directed to serve a copy of this decision and notice on The Herald Times, Black, and Bender within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for the management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided the conditions imposed above are met.

7. 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 October 27, 2003, subject to time extensions authorized 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 \$1,100. See 49 CFR 1002.2(f)(25).

8. 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.”**

9. Provided no OFA has been received, this exemption will be effective on November 16, 2003. Petitions to stay must be filed by November 3, 2003; petitions to reopen must be filed by November 12, 2003.

10. 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 October 17, 2004, 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 Nober.

Vernon A. Williams
Secretary