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SERVICE DATE - NOVEMBER 21, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 549X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN MECKLENBURG COUNTY, NC

Decided: November 17, 1997

By petition filed on August 4, 1997,¹ 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 portion of its Florence Service Lane, Charlotte Subdivision, extending from milepost SFC-1.52 near State Street to milepost SFC-0.82 at the end of track at Cedar Street Yard, a distance of 0.70 miles in Charlotte, Mecklenburg County, NC. The United Transportation Union (UTU) seeks imposition of labor protective conditions. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

CSXT indicates that only one shipper has shipped or received freight on the subject line in recent years. Jones Chemical, Inc. (Jones), operated a facility located at the end of the track proposed for abandonment. Jones received 122 carloads of chemicals over the line in 1995 and 135 carloads in 1996. However, in January 1997, Jones completed relocating from its facility on the line to another facility served by CSXT in the Charlotte area. Accordingly, CSXT avers that Jones no longer requires service on the line. There are apparently no prospects for future traffic on the line.

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 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 costs of owning and maintaining the line and allowing CSXT's assets to be used more productively elsewhere on its system. [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power as the only shipper on the line has relocated and no longer requires service.² Nevertheless, to ensure that the shipper is informed of our action, we will require CSXT to serve a copy of this decision on Jones within 5 days of the service date of this decision and to certify to us that it has done so.

¹ Notice of the filing was served and published in the Federal Register on September 15, 1997 (62 FR 48334).

² Given our finding on the lack of market power, we need not determine whether the proposed abandonment is limited in scope.

UTU requests the imposition of labor protective conditions. 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 an environmental report 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 the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 3, 1997, recommending that no environmental or historic conditions be imposed on the abandonment. No comments to the EA were filed by the November 3, 1997 due date. Based on SEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the line's abandonment, the right-of-way may be appropriate for other public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.³

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 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. CSXT must serve a copy of this decision on Jones within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)⁴ to allow rail service to continue must be received by the railroad and the Board by December 1, 1997, 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 a \$900 filing fee. See 49 CFR 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. Provided no OFA has been received, this exemption will be effective on December 21, 1997. Petitions to stay must be filed by December 8, 1997; petitions to reopen must be filed by December 16, 1997.

6. 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 November 21, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to

³ The North Carolina Department of Transportation (NCDOT) has expressed an interest in acquiring this corridor, and CSXT anticipates selling the corridor, including track and land, to NCDOT. The Charlotte-Mecklenburg Planning Commission, by letter to CSXT dated September 23, 1997, expressed agreement with the sale to NCDOT.

⁴ See Abandonment and Discontinuance of Rail Lines and Rail Transportation under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

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, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary