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SERVICE DATE - JUNE 23, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 559X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--IN  
ATLANTA, FULTON COUNTY, GA

Decided: June 18, 1998

By petition filed March 2, 1998, 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 0.35-mile portion of its Atlanta Service Lane, Atlanta Terminal Subdivision, extending from milepost 4.87 at Memorial Drive to milepost 5.22 at Wylie Street, in Atlanta, Fulton County, GA. Pursuant to 49 U.S.C. 10502(b), a notice was published in the Federal Register (63 FR 13721) on March 20, 1998, 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 Atlanta (the City). The United Transportation Union requests imposition of labor protective conditions. We will grant the exemption, subject to public use and standard employee protective conditions.

BACKGROUND

Before July 1991, the line segment proposed for abandonment was served by CSXT from the south. In 1991, CSXT abandoned its southern connection to the line, between milepost 4.39 at Glenwood Avenue and milepost 4.87 at Memorial Drive, to facilitate a Georgia Department of Transportation project to widen Interstate 20. At that time, there was one customer, Recycall, located at a facility on Memorial Drive, on the line segment CSXT now seeks to abandon, that used the line to ship scrap paper. Following abandonment of the southern connection, CSXT began serving Recycall from the north out of Hulsey Yard until Recycall vacated the facility. In September 1996, the facility was leased to another shipper of scrap paper, Weyerhaeuser Corporation (Weyerhaeuser). Weyerhaeuser shipped 37 carloads in 1996 and 19 carloads in 1997. Its last shipment was in May 1997 when it too vacated the Memorial Drive facility, which has remained vacant. According to CSXT, no shipments have moved over the line since May 1997, and CSXT does not anticipate any traffic in the future.<sup>1</sup> CSXT certifies that a copy of the petition was served on Weyerhaeuser.

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<sup>1</sup> There is a rail patron, Stein Steel, that is located between Wylie Street and Memorial Drive, but, according to CSXT, Stein Steel will not be affected by the abandonment because it is served by another rail line out of Hulsey Yard.

## 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 (RTP) 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 RTP. By minimizing the administrative expense of the application process, 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 from the costs of owning and maintaining the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the RTP will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because Weyerhaeuser, the only shipper that used the line, vacated its facility. Nevertheless, to ensure that Weyerhaeuser is aware of our action, we will require CSXT to serve a copy of this decision on Weyerhaeuser within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

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 abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified 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 May 1, 1998. SEA did not recommend imposition of any environmental conditions.

Comments on the EA were due May 31, 1998. In a letter dated June 2, 1998, the Georgia Department of Natural Resources, Historic Preservation Division, has determined that the entire line and the Fulton Terrace bridge at milepost 5.06 are both eligible for listing in the National Register of Historic Places and that the effects of the proposed abandonment must be determined. Therefore, SEA recommends that we impose a condition requiring CSXT to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C.

470f. We will impose the condition recommended by SEA. 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.

The City requests a NITU under 16 U.S.C. 1247(d) and 49 CFR 1152.29 in a letter filed April 9, 1998. It has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. By letter filed May 5, 1998, CSXT states that it is not willing to negotiate with the City for interim trail use. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, we cannot issue a NITU in this proceeding. See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails).

SEA has indicated in its EA that the right-of-way may be suitable for other public use after abandonment. As noted above, the City also requests imposition of a 180-day public use condition precluding CSXT from disposing of the rail corridor and removing or destroying potential trail-related structures, such as bridges, trestles, culverts and tunnels. The City states that the rail corridor is included in the Atlanta Parks Open Space and Greenway Plan adopted by the City Council in December 1993 and is suitable for a greenway trail. It states that the development of a greenway trail will provide an alternative mode of transportation, improve the City's air quality, and help to revitalize the City's Reynoldstown neighborhood.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. The City 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, commencing with the effective date of this decision. We note that 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 the City, but may engage in negotiations with other interested persons.

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 by CSXT of the above-described line, subject to: (a) the employee

protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (b) the condition that CSXT shall leave intact all of the right-of-way, including bridges, trestles, culverts and tunnels (but not track and track materials) 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; and (c) the condition that CSXT shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. CSXT is directed to serve a copy of this decision on Weyerhaeuser 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) to allow rail service to continue must be received by the railroad and the Board by July 2, 1998, 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 \$1,000. 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 July 23, 1998. Petitions to stay must be filed by July 8, 1998, and petitions to reopen must be filed by July 20, 1998.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file 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 June 23, 1999, 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 Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary