

36158  
EB

SERVICE DATE – LATE RELEASE DECEMBER 14, 2005

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Docket No. AB-55 (Sub-No. 658X)

#### CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION– IN HALL COUNTY, GA

Decided: December 14, 2005

By petition filed on August 26, 2005, 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 0.85-mile portion of its Southern Region, Atlanta Division, Gainesville Midland Subdivision, between milepost GGM 39.2 and the end of the track, milepost GGM 40.05, in Gainesville, Hall County, GA. Notice of the filing was served and published in the Federal Register on September 15, 2005 (70 FR 54603). We will grant the exemption, subject to environmental and standard employee protective conditions.

### BACKGROUND

The line proposed for abandonment was constructed in the late 1800s and was acquired by a predecessor of CSXT in 1959. CSXT states that no traffic has moved on the line since 2004. Prior to that time, there were two active shippers on the line. The first shipper, Lafarge Building Material (Lafarge), received 23 carloads of lumber in 2002, 4 carloads of lumber in 2003, and 2 carloads of lumber in 2004. According to CSXT, Lafarge received its last shipment on January 17, 2004, and no longer uses rail service from Gainesville. The second shipper, MGM Transport (MGM), received 39 carloads of lumber in 2002, 53 carloads of lumber in 2003, and 20 carloads of lumber in 2004. According to CSXT, MGM stopped using the line on June 5, 2004. CSXT states that there is no overhead traffic and no demand for CSXT service on the line. CSXT does not expect any rail-oriented business to develop in the area.

CSXT seeks to abandon the line to avoid maintenance and opportunity costs. With no prospects for railroad use and no customers on the line, CSXT submits that it is not generating any revenue from rail operations, though it continues to incur costs from maintaining the line. CSXT is engaged in negotiations with the City of Gainesville for the post-abandonment sale of the line's right-of-way for public use and development. In addition, CSXT plans to reuse or sell for scrap the rail and other track material.

## 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 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 allowing CSXT to avoid the cost of owning and maintaining a line that is not being used [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because there are no active shippers on the line, nor is there any demand for CSXT service on the line. The petition for exemption has been served on Lafarge and MGM. Lafarge has informed CSXT that it does not oppose the abandonment. Nevertheless, to ensure that Lafarge and MGM are informed of our actions, we will require CSXT to serve a copy of this decision on both Lafarge and MGM within 5 days of the service date and to 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 the exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

CSXT has submitted environmental and historic reports 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, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 25, 2005, and requested comments by November 25, 2005.

In the EA, SEA sets forth environmental concerns and recommendations for conditions to be imposed on any decision granting abandonment authority. Specifically, SEA notes that the United States Department of Commerce, National Geodetic Survey (NGS) advises SEA that two geodetic station markers may be affected by the proposed

abandonment. SEA therefore recommends that CSXT notify NGS 90 days prior to salvage activities in order to plan the relocation of such markers. Also, SEA states that the United States Environmental Protection Agency, Region 4 (EPA), has informed SEA that the abandonment activity would be subject to the requirements of the Clean Water Act (33 U.S.C. 1344) (CWA) if, in the process of dismantling the track, one or more acres of land are disturbed by clearing or grading and if storm water discharges from the disturbance enter a surface water body, either by direct conveyance (e.g., pipe, ditch, etc.) or through a municipal separate storm sewer system. EPA further notes that the abandonment is not subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements; rather, the State of Georgia Environmental Protection Division (GAEPD) has been authorized to implement the NPDES permit program, under section 402 of the CWA. EPA suggests reliance on the GAEPD response for a final determination in this matter. SEA therefore recommends that CSXT consult with GAEPD regarding CWA requirements prior to commencement of salvage activities.

No comments to the EA were filed by the due date. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be appropriate for other public use. As noted, CSXT is engaged in negotiations with the City of Gainesville for the post-abandonment sale of the line's right-of-way for public use and development. However, no public use condition has been requested, and, therefore, none will be imposed in this decision.

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 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: (1) notify NGS 90 days prior to salvage activities, so that plans can be made for the relocation of the two geodetic station markers that may be affected by the proposed abandonment; and (2) consult with GAEPD prior to commencement of any salvage activities, concerning the applicable CWA requirements.
2. CSXT is directed to serve a copy of this decision on Lafarge and MGM within 5 days after the service date of this decision and to 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 December 23, 2005, 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 \$1,200. 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 January 13, 2006. Petitions to stay must be filed by December 29, 2005, and petitions to reopen must be filed by January 9, 2006.

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 December 14, 2006, 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, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary