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SERVICE DATE - JUNE 4, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 569X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--IN GUERNSEY AND  
NOBLE COUNTIES, OH

Decided: June 3, 1999

By petition filed on February 16, 1999,<sup>1</sup> 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 Louisville Service Lane, Central Ohio Subdivision, extending from milepost BPB-4.9 near Byesville to milepost BPB-18.23 at the end of the track near Cumberland, a distance of 13.3 miles, in Guernsey and Noble Counties, OH. The United Transportation Union requests imposition of labor protective conditions. We will grant the exemption, subject to an environmental condition and standard employee protective conditions.

BACKGROUND

The line has been embargoed since July 13, 1998, because of washouts at eight locations between milepost BPB-5 and milepost BPB-8 that were the result of heavy rainstorms. CSXT states that it will cost \$186,875 to repair the washouts and an additional \$120,850 to timber, surface, and brush cut the 3.7 miles of track between milepost BPB-4.8<sup>2</sup> and BPB-8.5 that was not washed out. CSXT's estimates are based on the cost of repairing the track in accordance with Federal Railroad Administration Class 1 safety standards.

Only two shippers, Bi-Con Services, Inc. (Bi-Con), and American Electric Power (AEP), are located on the line. Bi-Con operates a manufacturing facility at Derwent, OH, at approximately milepost BPB-8, where it fabricates pipe and produces pressure vessel tanks for power plants and oil refineries, and AEP is located at the end of the line. According to CSXT's figures, Bi-Con has averaged one shipment a year,<sup>3</sup> and AEP has also used the line infrequently.<sup>4</sup>

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<sup>1</sup> Notice was served and published in the Federal Register on March 8, 1999 (64 FR 11084).

<sup>2</sup> We note that the proposed abandonment exemption begins at milepost BPB-4.9.

<sup>3</sup> Bi-Con had one outbound shipment in 1996 and one in 1997. It would have had an additional shipment in 1998, if the line had not been embargoed.

<sup>4</sup> AEP received one inbound rail locomotive in 1996, and since then has not used the line.

CSXT states that, since the washouts and subsequent embargo, it has met with Bi-Con, AEP, and local civic leaders, to discuss the long-term viability of the line. According to CSXT, Bi-Con, the Cambridge Guernsey County Community Improvement Corporation (CIC), and the State of Ohio are considering the possible purchase or subsidy of the line from Byesville to Derwent. Also, AEP is reportedly considering possibly subsidizing the entire line, or alternatively, the portion of the line from Derwent to Cumberland. CSXT submits that, should Bi-Con, AEP and CIC decide not to pursue the purchase or subsidy of all or any part of the line, alternative motor carrier transportation is available to Bi-Con and AEP. CSXT has certified that a copy of the petition was served on Bi-Con, AEP, and CIC.

#### 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 relieving CSXT of the costs of owning, restoring, and maintaining a line which is not currently operated and allowing it to apply its assets 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 proposed transaction is not necessary to protect shippers from the abuse of market power because the two shippers located on the line make minimal use of it and have alternative transportation. Nevertheless, to ensure that Bi-Con and AEP are informed of our action, we will require CSXT to serve a copy of this decision on them 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 April 16, 1999. In the EA, SEA indicated that the Ohio Historical Society (the SHPO) has indicated that one bridge, a through pinned truss bridge identified by CSXT as Bridge #5, is eligible for listing in the National Register of Historic Places and that the SHPO has requested additional information regarding the bridge. SEA, therefore, recommends that a condition be imposed on any grant of abandonment authority requiring CSXT to retain its interest in and take no steps to alter the historic integrity of Bridge #5 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

No comments to the EA were filed by the May 17, 1999 due date. We will impose the condition recommended by SEA. 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. Although SEA has indicated that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.<sup>5</sup>

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 in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the condition that CSXT shall retain its interest in and take no steps to alter the historic integrity of Bridge #5 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 Bi-Con and AEP 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 June 14, 1999, 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.”**

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<sup>5</sup> Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by March 29, 1999.

5. Provided no OFA has been received, this exemption will be effective July 4, 1999. Petitions to stay must be filed by June 21, 1999, and petitions to reopen must be filed by June 29, 1999.

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 June 4, 2000, 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, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams  
Secretary