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SERVICE DATE - NOVEMBER 29, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 619X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN ALLEGAN COUNTY, MI

Decided: November 25, 2002

By petition filed on August 12, 2002,¹ 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 railroad line in the Western Region, known as the Chicago Division, Grand Rapids Subdivision, Hamilton Industrial Track, extending from milepost CGB 19.00 in Holland, to milepost CGB 12.90 in Hamilton, a distance of approximately 6.1 miles, in Allegan County, MI. A request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by the Macatawa Greenway Partnership on behalf of Allegan County (the County). We will grant the exemption, subject to a public use condition and standard employee protective conditions.

BACKGROUND

CSXT serves only one shipper on the line proposed for abandonment. The shipper, Hamilton Farm Bureau (Hamilton), operates a facility at the end of the line in Hamilton, MI, which receives shipments of feed ingredients, fertilizer, and lumber. Hamilton received 183 carloads in 2000, 195 carloads in 2001, and 79 carloads between January and June in 2002. CSXT contends that the revenues from these shipments do not cover the line's operating and capital expenses. According to CSXT, the line requires significant maintenance in the nature of rail and tie work, and the bridges on the line will require rehabilitation in the near future. CSXT states that Hamilton is currently using truck transportation for all of its outbound shipments as well as certain inbound shipments. CSXT also states that it has served a copy of its petition on Hamilton, that Hamilton has not indicated any opposition to the abandonment, and that, following the abandonment, Hamilton intends to purchase this line for use as a private sidetrack. CSXT submits that, should Hamilton decide not to purchase the line, alternative

¹ Notice of the filing was served and published in the Federal Register on August 30, 2002 (67 FR 55914).

transportation options are available to Hamilton, including the use of truck transportation or the use of a nearby transload facility.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued 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 of CSXT's proposed abandonment 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 cost of owning and maintaining the line and by allowing CSXT to use its assets more productively elsewhere on its rail 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 Hamilton, the only active shipper on the line, does not oppose the proposed abandonment and has satisfactory alternative transportation service available. Nevertheless, to ensure that this shipper is informed of our action, we will require CSXT to serve a copy of this decision on Hamilton within 5 days of the service date 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 set forth 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 government 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 11, 2002, and requested comments.

No comments on the EA were filed by the November 8, 2002 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.

A request for interim trail use/rail banking under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905 was filed on September 19, 2002, on behalf of the County.² By letter filed on September 23, 2002, CSXT states that it is unable to negotiate for trail purposes at this time because it has already agreed to sell the line to Hamilton.³ Therefore, because the Trails Act permits only voluntary interim trail use, a NITU cannot be issued for the line segment. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986) (Trails).

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. SEA indicated in its EA that the right-of-way may be suitable for other public use following abandonment. The County requests imposition of a 180-day public use condition precluding CSXT 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. The County states that the rail corridor is a significant component of a regional open space plan and would make an excellent recreational trail.

The County 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 right-of-way to be abandoned, commencing from 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. Therefore, CSXT is not required to deal exclusively with the County, but may engage in negotiations with other interested persons.

The parties should note that operation of the public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. An offer of financial assistance (OFA) to acquire a rail line for continued rail service or to subsidize rail operations takes priority over

² On September 20, 2002, the County itself filed an identical request.

³ CSXT states that, if Hamilton decides not to purchase the line, it would be willing to consider trail use requests.

public use.⁴ Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision 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 public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the public use process may proceed.

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 rail 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 condition that CSXT shall leave intact 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 other interested person to negotiate the acquisition of the line for public use.

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

3. 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 December 9, 2002, 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).

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 29, 2002. Petitions to stay must be filed by December 16, 2002, and petitions to reopen must be filed by December 24, 2002.

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

⁴ See Trails, 2 I.C.C.2d at 608.

November 29, 2003, 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 Burkes.

Vernon A. Williams
Secretary