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SERVICE DATE - FEBRUARY 16, 2001

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Docket No. AB-55 (Sub-No. 583X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN OHIO COUNTY, WV

Decided: February 14, 2001

By petition filed on November 1, 2000, 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 1.88-mile portion of its line of railroad in the Central Region, known as its Allegheny Division, Ohio River Subdivision, extending from milepost BN-63 to milepost BN-2.51 in Wheeling, Ohio County, WV. The Board served and published notice of the petition in the Federal Register (65 FR 69992) on November 21, 2000. We will grant the exemption, subject to an historic preservation condition and standard employee protective conditions.

### BACKGROUND

There is only one shipper on the line, The City of Wheeling (City), which operates a water pollution control facility at the end of the line at Wheeling. According to petitioner, because the City has implemented a new method of water treatment that no longer requires the use of chlorine, the City no longer requires rail service at its facility. CSXT states that the City received no rail carloads in 1999 or 2000, and only one carload in 1998. Petitioner notes that the City does not oppose the abandonment.

CSXT further states that abandonment of the line will increase motorist safety within the City as 14 grade crossings in the downtown area will be eliminated as a result of this abandonment. CSXT indicates that it does not expect any new rail-oriented businesses to locate adjacent to the line. There is no overhead 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 cost of owning and maintaining the line 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 an abuse of market power. The only shipper on the line no longer requires rail service and does not object to the proposed transaction. Nevertheless, to ensure that the City is informed of our decision, we will direct CSXT to serve a copy of this decision on the City 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 interest 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 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 December 29, 2000, recommending that no environmental conditions be imposed on the abandonment. SEA requested comments by January 26, 2001.

On January 11, 2001, the West Virginia Division of Culture and History filed a comment advising the Board that the entire line proposed for abandonment may be eligible for listing in the National Register of Historic Places. Therefore, SEA recommends that, because of outstanding historic resource concerns, a condition be imposed requiring CSXT to consult with the West Virginia Division of Culture and History and to retain its interest in and take no steps to alter the historic integrity of the line proposed for abandonment until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). 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 other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.<sup>1</sup>

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<sup>1</sup> Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by December 11, 2000.

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 condition that, because of outstanding historic resource concerns, CSXT shall consult with the West Virginia Division of Culture and History and shall retain its interest in and take no steps to alter the historic integrity of the line proposed for abandonment until completion of the section 106 process of the NHPA.

2. CSXT is directed to serve a copy of this decision on the City of Wheeling 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)<sup>2</sup> to allow rail service to continue must be received by the railroad and the Board by February 26, 2001, subject to the 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 \$1,000 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 March 18, 2001. Petitions to stay must be filed by March 5, 2001, and petitions to reopen must be filed by March 13, 2001.

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 February 16, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any legal or regulatory barrier to 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.

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<sup>2</sup> 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).

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By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary