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SERVICE DATE - MARCH 9, 1999

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 568X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN FRANKLIN COUNTY, PA

Decided: March 8, 1999

By petition filed November 16, 1998,¹ 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 1.9-mile portion of its line of railroad known as the Baltimore Service Lane, Lurgan Subdivision, extending between milepost BAV-20.5 at 4th Street and milepost BAV-22.4 at Commerce Street in Chambersburg, Franklin County, PA. Protests were filed by Frederick A. Fox, Kaye A. Fox, Frederick Armstrong Fox and Karla M. Fox (collectively, the Foxes), the Department of Defense (DOD), and Charles W. Karper, Inc., Universal Surplus & Equipment, and Amsley's Collision Services (collectively, local businesses). In addition, a request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed by the Borough of Chambersburg (the Borough). Also, the United Transportation Union (UTU) requests imposition of employee protective conditions. We will grant the exemption, subject to public use, trail use and standard employee protective conditions.

BACKGROUND

The Lurgan Subdivision is a 52.9-mile line extending from Miller, MD, to Lurgan, PA. According to CSXT, the portion of the Lurgan Subdivision proposed for abandonment is part of a project being sponsored by the Pennsylvania Department of Transportation (PaDOT)² and the Borough to relocate a section of railroad tracks between Hagerstown, MD, and Shippensburg, PA. CSXT states that abandonment of the 1.9-mile line, which passes through downtown Chambersburg, will eliminate nine grade crossings, thereby improving public safety in the Borough.

According to CSXT, very little traffic originates or terminates on the line. Chambersburg Engineering, the only shipper located on the line, operates a heavy equipment manufacturing

¹ Notice of the filing was served and published in the Federal Register on December 4, 1998 (63 FR 67168).

² On February 19, 1999, PaDOT filed a letter in support of the proposed abandonment.

company, and has made minimal use of rail service.³ CSXT asserts that Chambersburg Engineering will not lose rail service after the abandonment because CSXT intends to reclassify the track between 4th Street and Main Street in Chambersburg (where Chambersburg Engineering is located) as industrial sidetrack and sell the track to a public entity for continued rail operations.

The line has been used primarily to handle overhead traffic destined to Franklin Storage, Inc. (Franklin), at Chambersburg and the Letterkenny Army Depot (Letterkenny) at Culbertson, PA, as well as for coordinated CSXT and Consolidated Rail Corporation (Conrail) Lurgan run-through trains to and from Harrisburg, PA. In 1996, Franklin received 303 carloads at its leased warehouse facility at Commerce Street in Chambersburg, which is located just north of the line proposed for abandonment. However, in late 1996, Franklin began receiving all of its rail shipments at a CSXT-served warehouse facility in the Chambersburg Industrial Park, which is located just south of milepost BAV-20.4 and is not affected by the proposed abandonment. Franklin also operates another warehouse facility in Chambersburg that is served by Conrail. As a result, in 1997 and 1998, CSXT has handled no overhead shipments for Franklin at its Commerce Street facility.

In 1996, 1997, and the first nine months of 1998, CSXT handled 218, 189, and 105 overhead rail shipments, respectively, for Letterkenny. CSXT states that, following abandonment of the line, all overhead traffic to Letterkenny will be routed via trackage rights over a Conrail main line east of Chambersburg. CSXT will enter Conrail's line at Chambersburg just south of milepost BAV-20.5, and at Hagerstown. It will exit Conrail's line at Lurgan and will provide service on CSXT's retained trackage to Letterkenny. CSXT could also serve the Franklin warehouse on Commerce Street via these trackage rights if rail service to that facility is needed. Also, the CSXT/Conrail Lurgan run-through trains will be operated over the Conrail line as well.

CSXT promises that it will take no steps to implement the abandonment until the trackage rights over Conrail's line are in place and the resulting operations are satisfactory. According to CSXT, before the trackage rights can be implemented, Conrail must make certain improvements on its rail line between Chambersburg and Lurgan. CSXT plans to file a trackage rights notice of exemption with the Board.

On December 23, 1998, the Foxes filed an objection both to CSXT's petition for exemption, and to the Borough's plan to convert the line into a recreational trail, at least insofar as the Borough's plan includes that portion of the line extending from Main Street northward to South Street.⁴ The Foxes own and operate Gaumer's Chassis Engineering (GCE), a manufacturer and

³ In 1997, it shipped six carloads of scrap, iron or steel, by rail. In 1995, 1996, and during the first nine months of 1998, it did not ship or receive any carloads by rail.

⁴ The local businesses basically concur with the sentiments expressed in the Foxes' protest (continued...)

distributor of suspension components for heavy trucks and other motor vehicles, located on 6 acres of property bordered by South Street on the north, Black Avenue on the east, and the line on the west.⁵ According to the Foxes, GCE's business is expanding and its need for raw materials for its foundry operation is increasing. GCE anticipates that it can achieve significant savings by having the scrap iron and steel bar stock that its foundry requires delivered by rail, in lieu of the motor carrier service that it currently uses. For this reason, GCE wishes to become a rail customer and, accordingly, wants that portion of the line from 4th Street to South Street, not just from 4th Street to Main Street, to remain in railroad use and not to be used as a recreational trail. The Foxes also state that they are considering making an offer to purchase a portion of the line.

On December 23, 1998, DOD also filed an objection to the proposed abandonment and a request that we grant only a discontinuance of service to CSXT in this proceeding. DOD has four basic concerns regarding the exemption and service to Letterkenny. First, it is concerned about the efficient switching of railcars to and from Letterkenny, which it submits may be affected by Norfolk Southern Railway Company (NSR) assuming control of the Conrail trackage rights line pursuant to CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (STB served July 23, 1998) (CSX/NS/CR No. 89).⁶ Second, DOD is concerned that the improvements that Conrail must make to its rail line to date have not been made. Third, DOD is concerned that the added cost of CSXT obtaining a trackage rights agreement over the Conrail line will increase the cost of shipping and receiving railcars to Letterkenny. Fourth, DOD is concerned with the changes that may result from the recent reorganization of three major eastern rail carriers and the proposed revision of rail operations in the Chambersburg area and opines that the rail infrastructure should be left in place. DOD requests a 1-year oversight period to ensure that efficient quality rail service continues to Letterkenny before the abandonment is approved and tracks are removed in the vicinity of Chambersburg.

On January 29, 1999, and February 1, 1999, CSXT responded to the protests of the Foxes and DOD, respectively. CSXT states that GCE has been at its present location in Chambersburg since 1982, and has never used rail service during that time. CSXT contends that, if the Foxes or a public entity wishes to purchase and leave the rail line between Main Street and South Street intact, CSXT will sell the rail line to that entity. CSXT maintains that the past history of this line and the projections by GCE for future rail service on the line do not justify denial of abandonment authority. CSXT argues that, despite the fact that the area between Main Street and South Street is zoned for

⁴(...continued)
regarding the use of this portion of the line as a recreational trail.

⁵ The Foxes contend that the property is zoned, for the most part, for heavy manufacturing.

⁶ DOD anticipates congestion and delay in getting on the NS line.

heavy manufacturing and medium manufacturing, and at least four heavy/medium manufacturing companies are located in that area, there has been no need for rail service for many years.

CSXT contends that all of DOD's concerns revolve around the effect of CSXT's service to Letterkenny via trackage rights over Conrail's line east of Chambersburg. CSXT states that it executed a trackage rights agreement with Conrail, dated January 26, 1999, which should alleviate any concerns DOD might have regarding its future rail shipments. CSXT further states that NSR has also agreed to be bound by the trackage rights agreement, which provides that the trains and equipment of Conrail/NSR and CSXT shall be operated over the Conrail trackage "without prejudice or partiality to either party and in such manner as will afford the most economical and efficient manner of movement of all traffic." The agreement allows CSXT to enter and exit Conrail's trackage at both Hagerstown and Chambersburg. CSXT maintains that it is confident that this trackage rights agreement will allow it to provide service to Letterkenny at least equal to, if not better than, the current rail service. Finally, CSXT argues that requiring CSXT to leave its rail in place for up to 1 year, when trackage rights are in place and providing Letterkenny with adequate service, will only serve to defeat one of the primary purposes of the abandonment, which is the removal of nine grade crossings to improve safety in downtown Chambersburg.

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 from the cost of maintaining the line and allowing it to apply its assets more productively elsewhere on its rail system and will ensure the operation of transportation facilities and equipment without detriment to the public health and safety by allowing nine grade crossings to be eliminated [49 U.S.C. 10101(5), (8) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power because Chambersburg Engineering, the sole shipper on the line, has only a minimal need for rail service and that portion of the line used to serve its facility will be reclassified as industrial

sidetrack and sold for continued rail operations.⁷ Also, the overhead traffic will be rerouted and CSXT's promise that it will take no steps to implement the abandonment until the trackage rights over Conrail's line are in place and the resulting operations are satisfactory should alleviate DOD's concerns.⁸ Given our market power finding, we need not determine whether the proposed transaction is limited in scope. To ensure that Chambersburg Engineering, which is not a party to this proceeding, is informed of our action, we will require CSXT to serve a copy of this decision on Chambersburg Engineering within 5 days of the service date of this decision and certify to us that it has done so.

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, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on January 15, 1999, recommending that no environmental or historic conditions be imposed on the abandonment.

No comments to the EA were filed by the February 16, 1999 due date. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

On November 23, 1998, the Borough filed a request for interim trail use/rail banking under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for the line segment between the intersection of the line and Main Street at approximately milepost 20.8, and the intersection of the line and Commerce Street at approximately milepost 22.4, a distance of 1.6 miles. 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 December 28, 1998, CSXT states that it is willing to negotiate with the Borough for interim trail use. The Borough's request complies with

⁷ As far as the Foxes' protest is concerned, we agree with CSXT that GCE's projections for future rail traffic do not justify denial of abandonment authority.

⁸ We agree with CSXT that granting only a discontinuance would defeat the stated purpose of this abandonment proposal. Also, a merger-related oversight condition is not appropriate here. We note that a 5-year oversight period was imposed in CSX/NS/CR No. 89.

the requirements of 49 CFR 1152.29 and CSXT is willing to enter into negotiations. Therefore, we will issue a NITU for the line segment described above. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that the right-of-way may be suitable for other public uses following abandonment. As noted above, the Borough has also requested that a 180-day public use condition be imposed covering the same 1.6-mile line segment described above. The Borough requests that CSXT be precluded 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 Borough submits that this corridor would make an excellent recreational trail and conversion of the property for trail use is in accordance with local plans. The Borough states that the 180-day period is needed to complete negotiations with CSXT.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The Borough 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 covering the 1.6-mile segment also will be imposed, commencing from the effective date of this decision and notice. Also, 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 the 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 Borough, but may engage in negotiations with other interested persons.

The parties, specifically the Foxes and the local businesses, should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 U.S.C. 1152.27(c)(1), the effective date of this decision and notice 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 trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes 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 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 conditions that CSXT shall: (1) leave intact all of the right-of-way for the line segment between the intersection of the line and Main Street at approximately milepost 20.8 and the intersection of the line and Commerce Street at approximately milepost 22.4, 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 and notice to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; and (2) comply with the interim trail use/rail banking procedures set forth below.

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

3. If an interim trail use/rail banking agreement is reached for the line segment described in paragraph 1 above, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.

7. 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 March 19, 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 a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

8. 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.**"

9. Provided no OFA has been received, this exemption will be effective on April 8, 1999. Petitions to stay must be filed by March 24, 1999, and petitions to reopen must be filed by April 5, 1999.

10. 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 March 8, 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 not 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