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SERVICE DATE – LATE RELEASE JUNE 25, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 740X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN NIAGARA FALLS, NIAGARA COUNTY, N.Y.

Decided: June 25, 2015

CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately a 0.48-mile rail line on its Northern Region, Albany Division, Niagara Subdivision, between milepost QDD 173.81 (south of Lafayette Avenue) and the end of the track at milepost QDD 173.33 (north of University Drive) in Niagara Falls, Niagara County, N.Y. Notice of the exemption was served and published in the Federal Register on May 27, 2015 (80 Fed. Reg. 30,324). The exemption is scheduled to become effective on June 26, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on June 1, 2015, recommending that two conditions be imposed on any decision granting abandonment authority: (1) requiring CSXT to, (a) prior to commencement of any salvage activities, consult with the U.S. Fish and Wildlife Service (USFWS) to assess potential impacts to the northern long-eared bat or other federally listed threatened or endangered species; (b) comply with any reasonable requirements if USFWS recommends an appropriate mitigation measure; and (c) report the results of the USFWS consultations to OEA, in writing, prior to the onset of salvage operations; and (2) requiring CSXT to, (a) prior to beginning any salvage activities, consult with the New York Department of State (DOS) to determine whether state coastal management consistency certification is required; (b) obtain state coastal management consistency certification, as necessary; and (c) report the results of these consultations, in writing to OEA, prior to the onset of salvage operations.

OEA issued its final EA on June 19, 2015, noting that two new comments were received in response to the EA by the June 15, 2015 due date.

In the final EA, OEA states that on June 1, 2015, it received a comment from the USFWS, New York Field Office in response to CSXT's environmental report. Based upon the comment, OEA no longer recommends imposing the condition requiring CSXT to consult with USFWS prior to commencement of any salvage activities. Therefore, this condition will not be imposed.

OEA also states in its final EA, that on June 15, 2015, it received a comment from DOS regarding an incomplete Coastal Consistency submission from CSXT. OEA states that the DOS

included a Federal Consistency Assessment Form with instructions that CSXT is required to complete and submit the form to DOS to ensure consistency of the proposed abandonment with the New York Coastal Management Program. OEA concludes that DOS's comment reinforces the need for CSXT to consult with DOS to confirm consistency with the coastal zone management program. OEA revises its previously recommended condition and now recommends that CSXT be required to: (a) prior to beginning any salvage activities, consult with DOS to determine whether state coastal management consistency certification is required; (b) report the results of these consultations in writing to OEA, prior to the onset of salvage operations; (c) obtain state coastal management consistency certification if it is determined that the proposed project is located in a coastal zone management area and coastal management consistency certification is required; and (d) wait to file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until it reports the results of these consultations in writing to OEA and the Board has removed this condition. Therefore, the condition previously recommended by OEA in the EA, as revised in the final EA, will be imposed.

Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on May 27, 2015, exempting the abandonment of the line described above is subject to the condition that CSXT shall: (a) prior to beginning any salvage activities, consult with DOS to determine whether state coastal management consistency certification is required; (b) report the results of these consultations in writing to OEA, prior to the onset of salvage operations; (c) obtain state coastal management consistency certification if it is determined that the proposed project is located in a coastal zone management area and coastal management consistency certification is required; and (d) wait to file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until it reports the results of these consultations in writing to OEA and the Board has removed this condition.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.