

SERVICE DATE – SEPTEMBER 19, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 712X)

CSX TRANSPORTATION, INC.—ABANDONMENT
EXEMPTION—IN WHITE COUNTY, IND.

Digest:¹ This decision denies CSX Transportation, Inc.’s request to abandon an approximately 9.67-mile rail line in White County, Ind.

Decided: September 18, 2014

By petition filed on February 4, 2014, 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 an approximately 9.67-mile rail line in White County, Ind. (the Line). Notice of the filing was served and published in the Federal Register on February 24, 2014 (77 Fed. Reg. 10,227). On March 10, 2014, Monticello Farm Service, Inc. (MFS), a shipper on the Line, filed a letter opposing the petition, primarily on the basis of a challenge to CSXT’s estimation of future carloads. On May 23, 2014, we issued a decision directing CSXT to file an amended petition addressing the issues raised in MFS’s opposition and making any necessary adjustments to its evidentiary presentation. CSXT filed its amended petition on June 2, 2014, and MFS filed a reply in opposition to the amended petition on June 23, 2014.

We will deny CSXT’s petition. CSXT has not provided the Board with sufficient evidentiary support for the costs and revenues associated with the Line. Thus, based on the available record, it is not possible for us to determine the economic burden associated with continued ownership and operation of this Line, which continues to have an active shipper.

PRELIMINARY MATTERS

On July 1, 2014, CSXT filed a motion to strike MFS’s June 23, 2014, reply in opposition to the amended petition or, in the alternative, for leave to file a substantive response to MFS’s reply in opposition.² In a July 21, 2014, filing, MFS opposes CSXT’s motion. We will deny CSXT’s motion insofar as it seeks to strike MFS’s June 23 reply. Although not specified in our prior decision, MFS was entitled to reply to the new material in CSXT’s amended petition. In

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² CSXT included its substantive response in the motion. See Mot. to Strike 6-10.

the interest of a complete record, however, we will grant CSXT's motion in the alternative to file a substantive response.

BACKGROUND

The Line extends approximately 9.67-miles on CSXT's Monticello Industrial Track, Monon Subdivision, between Monon, milepost 0QA 88.33, and Monticello, milepost 0QA 98.00, in White County, Ind. The only shipper on the line is MFS in Monticello, Ind. CSXT states in its original petition that MFS received 13 carloads of nitrogen fertilizer by rail in its selected base year of October 30, 2012 to October 30, 2013. CSXT uses that number of 13 carloads for its forecast year estimates. MFS responded that between October 30, 2013 and March 10, 2014—a period after CSXT's selected base year—it received 26 carloads and it anticipated shipments of 90 to 120 carloads before March 2015.³

In its amended petition, CSXT changes its base year to May 2013 to May 2014.⁴ In this new base year, CSXT moved 39 carloads—though CSXT notes that no traffic moved over the Line between January 1, 2013, and August 21, 2013, or in February and March 2014.⁵ CSXT also asserts that, although MFS received 17 cars in December 2013, those shipments were a “direct result of CSXT's notifying MFS that CSXT was going to seek exemption authority in order to abandon the [L]ine,” and, thus, are an anomaly and should not be annualized to estimate forecast year traffic.⁶ Accordingly, CSXT assumes that MFS will receive 39 carloads in the forecast year based on the amount of traffic that it moved in its new base year.⁷

In response to the amended petition, MFS again challenges CSXT's carload estimation and states that it plans to receive 108 carloads in a forecast year beginning June 1, 2014.⁸ In its July 1 filing, CSXT responds that MFS has, at best, only justified a projection of 16 carloads, but CSXT nonetheless continues to urge the Board to rely upon its traffic projection of 39 carloads provided in the amended petition.⁹

In both its petition and its amended petition, CSXT asserts that continued operation of the Line will be a burden on CSXT and on interstate commerce. It argues that the Board should grant its petition for exemption because, in accordance with 49 U.S.C. § 10502(a), regulation of the proposed abandonment is not necessary to carry out the transportation policy of 49 U.S.C. § 10101, and because the transaction is limited in scope and will not result in an abuse

³ Resp. to Pet. 1.

⁴ Am. Pet., V.S. Scaggs at 2.

⁵ Id. 5; id., Ex. 1.

⁶ Id. 5.

⁷ Id., Ex. 1.

⁸ Resp. to Am. Pet., App. 1 at 2-3.

⁹ Mot. to Strike 10.

of market power.¹⁰ CSXT largely relies on its claim that the revenues received from carloads shipped and received by MFS are insufficient compared to the railroad's costs to support continued operations on the Line.

In its original petition, relying on the 13 carloads that it actually handled during its original base year, CSXT calculates that it received \$51,763 in total revenues attributable to the Line,¹¹ incurred total avoidable on-branch costs of \$123,260,¹² and incurred total avoidable off-branch costs of \$6,135.¹³ As noted above, in the amended petition, CSXT changes its base year to May 2013 to May 2014, during which it moved 39 carloads and uses this 39 carload figure to recalculate the forecast year revenues and costs.¹⁴ CSXT calculates (using 39 carloads) that, during the base year, it received \$137,908 in total revenues attributable to the Line,¹⁵ incurred total avoidable on-branch costs of \$123,260,¹⁶ and incurred total avoidable off-branch costs of \$147,328.¹⁷ CSXT also estimates it would receive \$137,908 in total revenues attributable during the forecast year.¹⁸

MFS disputes CSXT's calculations, claiming that CSXT has provided no explanation of how it arrived at certain costs.¹⁹ Specifically, MFS challenges CSXT's costs for maintenance-of-way and structures, maintenance of equipment-locomotives, costs for transportation, and property taxes. MFS also argues that CSXT has not explained what MFS characterizes as the "radical disparity" in CSXT's calculation of off-branch costs for the base year in the original petition—\$6,135—and CSXT's calculation of off-branch costs for the base year in the amended petition—\$147,328.²⁰

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without prior Board 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

¹⁰ Am. Pet. 8.

¹¹ Pet., Ex. 1, line 4.

¹² Id., Ex. 1, line 5.

¹³ Id., Ex. 1, line 6. CSXT also projected that it would earn no revenue during the forecast year. Id., Ex. 1, line 4.

¹⁴ Am. Pet. 5.

¹⁵ Id., Ex. 1, line 4.

¹⁶ Id., Ex. 1, line 5.

¹⁷ Id., Ex. 1, line 6.

¹⁸ Id., Ex. 1, line 4.

¹⁹ Resp. to Am. Pet. 8-10.

²⁰ Id. Pet. 10.

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. As discussed below, because CSXT has not provided sufficient evidence for us to make these findings, we will deny its petition.

In any abandonment case where authority is sought by application or petition for exemption, the railroad must demonstrate that the line in question is a burden on interstate commerce. Typically, the types of abandonment proposals that are authorized through the exemption process are those where shippers do not contest the abandonment or, if they do contest it, the revenue from the traffic on the line is clearly marginal compared to the cost of operating the line. “The petitioner ‘bears the burden of showing that keeping the line in service . . . would impose a burden on it that outweighs the harm that would befall the shipping public, and the adverse impacts on rural and community development, if the rail line were abandoned.’” Mich. Air-Line Ry. Co.—Aband. Exemption—in Oakland, Cnty., Mich., AB 1053 (Sub-No. 1X), slip op. at 4 (STB served May 18, 2011) (quoting Wyo. & Colo. R.R.—Aband. Exemption—in Carbon Cnty., Wyo., AB 307 (Sub-No. 5X), slip op. at 4 (STB served Nov. 10, 2004)).

Here, CSXT does not provide sufficient evidence for us to compare the revenue from the traffic on the Line with the cost of operating the Line. First, the revenues provided by CSXT are inconsistent. In its original petition, CSXT provided a line-by-line breakdown of its revenues and costs for the base year, forecast year, and subsidy year.²¹ In that petition, CSXT stated that the total revenue attributable in the base year is \$51,763, but \$0 in the forecast year;²² however, in the amended petition, the revenue attributable in the base and forecast year is the same: \$137,908.²³ CSXT does not explain this inconsistency.

Second, CSXT’s off-branch costs are unsupported. Although CSXT increased its carload totals for its forecast year from 13 carloads in the original petition to 39 in the amended petition, the total avoidable off-branch costs disproportionately jump from \$6,135 to \$147,328, without explanation.²⁴ Although we would expect the off-branch costs to rise as carloads increase, CSXT provides no support for the disproportionate increase in the off-branch costs it presents.

Third, in both its original and amended petition, CSXT’s proffered opportunity costs are inconsistent with its own formula that it claims to have used to calculate these costs. In its original petition, CSXT calculated that its opportunity costs are \$72,292.²⁵ CSXT stated that it calculates opportunity costs in the following manner:

²¹ See generally Pet., Ex. 1.

²² Id., Ex. 1, line 4.

²³ Am. Pet., Ex. 1, line 4.

²⁴ Compare Pet., Ex. 1, line 6 with Am. Pet., Ex. 1, line 6.

²⁵ Pet. 6.

Opportunity costs (or total return on value of road property) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. . . . [T]he opportunity cost of road property is computed on an investment base equal to the sum of: (1) allowable working capital; (2) the net liquidation value (NLV) of the line; and (3) current income tax benefits (if any) resulting from abandonment. The investment base (or valuation of the road properties) is multiplied by the current nominal rate of return, to yield the nominal return on value. The nominal return is then adjusted by applying a holding gain (or loss) to reflect the increase (or decrease) in value a carrier will expect to realize by holding assets for 1 additional year.²⁶

CSXT provided the following numbers relevant to the computation of opportunity costs: working capital of \$5,065, NLV of \$771,201, taxes in the amount of \$293,056, a nominal rate of return of 17.22%, and holding gains in the amount of \$63,393. Pursuant to CSXT's formula, opportunity costs should have been \$19,816;²⁷ however, CSXT claimed opportunity costs of \$72,292 without acknowledging or explaining the discrepancy.²⁸ This discrepancy is carried over into the amended petition where CSXT simply reiterates that its opportunity costs are \$72,292.²⁹ In addition, CSXT decreases its holding gains in the amended petition, but it does not account for that difference when it states its opportunity costs.³⁰

Finally, in both the original and amended petitions, CSXT claims a net liquidation value of \$771,201.³¹ However, the only portion of this value that CSXT supports is \$38,800, which is the value of the real estate.³² CSXT failed to provide any support for the \$732,401 it claims is the net salvage value for the Line.

Based on the numbers provided by CSXT in its original petition and the challenge to that petition by MFS, we directed CSXT to file an amended petition, noting that the original petition "is not complete."³³ However, many of the numbers proffered in the amended petition are unreliable because of miscalculations, unexplained discrepancies, or a lack of supporting evidence. Although it remains possible that the Line is a burden on interstate commerce, based

²⁶ Id. (quoting Wis. Ctrl. Ltd.—Aband.—in Ozaukee, Sheboygan & Manitowoc Cntys., Wis., AB 303 (Sub-No. 27), slip op. at 10-11 (STB served Oct. 19, 2004)).

²⁷ $(\$5,065 + \$771,201 - \$293,056) \times 17.22\% - \$63,393 = \$19,816$.

²⁸ See Pet. 5-6.

²⁹ Am. Pet. 3.

³⁰ Furthermore, in the Verified Statement of William Scaggs, CSXT proffers opportunity costs in the amount of \$70,421. Am. Pet., V.S. Scaggs at 1.

³¹ Pet., Ex. 1, line 12.c; Am. Pet., Ex. 1, line 12.c.

³² See generally Pet., V.S. Lady.

³³ CSX Transp., Inc.—Aband. Exemption—in White Cnty., Ind., AB 55 (Sub-No. 712X), slip op. at 2 (STB served May 23, 2014).

on the information provided to us by CSXT, we cannot determine whether that is the case on the record now before us.

Given the concerns raised by MFS, an active shipper, the discrepancies, and the lack of support for many of CSXT's figures, there remain enough unresolved questions that we will deny the petition. See, e.g., Mich. Air-Line Ry. Co.—Aband. Exemption—in Oakland, Cnty., Mich., AB 1053 (Sub-No. 1X), slip op. at 4 (STB served May 18, 2011); Wyo. & Colo. R.R.—Aband. Exemption—in Carbon Cnty., Wyo., AB 307 (Sub-No. 5X), slip op. at 4 (STB served Nov. 10, 2004); Soo Line R.R.—Aband. Exemption—in Marshall & Roberts Cntys., S.D., AB 57 (Sub-No. 48X), slip op. at 5-6 (STB served Nov. 19, 1999). Denial of this petition is without prejudice to CSXT refiling an appropriate abandonment application or petition for exemption that cures the defects found in the current petition. See Class Exemption for Expedited Aband. Procedure for Class II & Class III Railroads, EP 647, slip op. at 7 (STB served Dec. 15, 2006) (“Even if a petitioner initially fails to provide sufficient evidence to meet the statutory requirements for an exemption, we often will deny the petition without prejudice to refiling a new petition for exemption, or to filing a formal application with the evidence that is needed to support its request.”).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's petition for exemption is denied.
2. CSXT's motion to strike is denied.
3. CSXT's motion in the alternative to file a substantive response is granted.
4. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.