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SERVICE DATE - NOVEMBER 21, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 521X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN FULTON COUNTY, GA

Decided: November 19, 1997

By petition filed on August 4, 1997,¹ 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 0.58-mile portion of its railroad line known as the Atlanta Terminal Subdivision, extending from milepost 864.04 near Wheeler Street to milepost 864.62 at the end of the track at Simpson Street, in Fulton County, GA. The United Transportation Union (UTU) seeks imposition of labor protective conditions. On November 18, 1997, The City of Atlanta, GA (City), filed a petition requesting permission to late-file a request for issuance of a public use condition and a trail use condition.² The City simultaneously filed the requests. Due to the lateness of these filings, they will be addressed in a subsequent decision. We will grant the exemption, subject to standard employee protective conditions and an historic preservation condition.

BACKGROUND

CSXT states that the line was embargoed on January 26, 1996, due to the poor condition of the south abutment of the Kennedy Street Bridge, located at milepost 864.50, as well as other track conditions on the line. The Kennedy Street Bridge, built in 1907, is a single-span, open-deck bridge, with concrete abutments, steel girders, and timber ties. According to CSXT, because of the age of the bridge and antiquated construction methods, the south abutment of the bridge has failed, as evidenced by both horizontal and vertical cracks in the structure. CSXT submits that the south abutment of the bridge must be completely reconstructed at a cost of \$138,000, and 48 bridge ties must be replaced at a cost of \$6,000, for a total cost of \$144,000 before rail service can resume over

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the bridge. Also, CSXT states that \$150,000 in additional work must also be performed before the line can be reopened,³ for a total cost of \$294,000 to reinstitute service on the line.

Southeast Recycling Corporation (Southeast), the only shipper currently on the line, operates a scrap paper facility near the end of the line. According to CSXT, Southeast either shipped or received by rail 87 carloads of scrap paper in 1994 and 44 carloads of scrap paper in 1995. CSXT states that, since the line has been embargoed, Southeast has used motor carriers exclusively. CSXT asserts that Southeast also has other rail options, including the team track and intermodal facilities of both CSXT and Norfolk Southern Railway Company, which are located a few miles from Southeast's facility. In addition to Southeast, CSXT states that, before the embargo, there was another shipper on the line, Nicholson Transfer & Storage Company (Nicholson), that relocated to another rail-served facility in the Atlanta area in September 1996, and, thus, will not be affected by the abandonment. CSXT served a copy of the petition on both Southeast and Nicholson.

Finally, CSXT states that it also served a copy of the petition on the City of Atlanta (City), which has requested a right of first refusal to acquire the underlying right-of-way for the purpose of creating a trail following abandonment, and the Atlanta Regional Commission, which supports the City's position. Our records do not indicate that the City has filed a request for a public use condition or for trail use/rail banking, and, therefore, no such conditions will be imposed.

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 from the costly repairs necessary to reinstitute service and of the costs of owning and maintaining the line [49 U.S.C. 10101(5) 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 an abuse of market power. One shipper, Nicholson, has apparently relocated off the line and the sole remaining shipper,

³ Specifically, the work involves: (1) replacing ties at a cost of approximately \$40,000; (2) clearing away asphalt and concrete from the turnouts and other track materials at a cost of \$35,000; (3) repaving work at a cost of \$69,000; and (4) replacing bridge ties on another bridge over Meldrum Street at a cost of \$6,000.

Southeast, has apparently made exclusive use of motor carrier transportation since January 1996, when the line was embargoed, and has other rail options.⁴ Nevertheless, to ensure that the shippers are informed of our action, we will require CSXT to serve a copy of this decision on both shippers within 5 days of the service date of this decision and certify to us that it has done so.

UTU requests the imposition of labor protective conditions. 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 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 October 3, 1997, in which it notes that the Georgia State Historic Preservation Office (GA SHPO) has expressed the opinion that the line in its entirety, appears to qualify for the National Register of Historic Places. Therefore, SEA recommends that CSXT shall consult with the GA SHPO and shall retain its interest in and take no steps to alter the historic integrity of the line until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. No comments to the EA were filed by the November 3, 1997 due date. Based on SEA's recommendation, we conclude that the proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources. SEA states that following the abandonment, the right-of-way may be appropriate for other public uses under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

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: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); and (2) the condition that CSXT shall consult with the Georgia State Historic Preservation Office and shall retain its interest in and take no steps to alter the historic integrity of the line until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

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

⁴ Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)⁵ to allow rail service to continue must be received by the railroad and the Board by December 1, 1997, 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 \$900 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 on December 21, 1997. Petitions to stay must be filed by December 8, 1997, and petitions to reopen must be filed by December 16, 1997.

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 November 21, 1998, 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 and Vice Chairman Owen.

Vernon A. Williams
Secretary

⁵ 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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BACKGROUND

CSXT states that the line was embargoed on January 26, 1996, due to the poor condition of the south abutment of the Kennedy Street Bridge, located at milepost 864.50, as well as other track conditions on the line. The Kennedy Street Bridge, built in 1907, is a single-span, open-deck bridge, with concrete abutments, steel girders, and timber ties. According to CSXT, because of the age of the bridge and antiquated construction methods, the south abutment of the bridge has failed, as evidenced by both horizontal and vertical cracks in the structure. CSXT submits that the south abutment of the bridge must be completely reconstructed at a cost of \$138,000, and 48 bridge ties must be replaced at a cost of \$6,000, for a total cost of \$144,000 before rail service can resume over

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the bridge. Also, CSXT states that \$150,000 in additional work must also be performed before the line can be reopened,³ for a total cost of \$294,000 to reinstitute service on the line.

Southeast Recycling Corporation (Southeast), the only shipper currently on the line, operates a scrap paper facility near the end of the line. According to CSXT, Southeast either shipped or received by rail 87 carloads of scrap paper in 1994 and 44 carloads of scrap paper in 1995. CSXT states that, since the line has been embargoed, Southeast has used motor carriers exclusively. CSXT asserts that Southeast also has other rail options, including the team track and intermodal facilities of both CSXT and Norfolk Southern Railway Company, which are located a few miles from Southeast's facility. In addition to Southeast, CSXT states that, before the embargo, there was another shipper on the line, Nicholson Transfer & Storage Company (Nicholson), that relocated to another rail-served facility in the Atlanta area in September 1996, and, thus, will not be affected by the abandonment. CSXT served a copy of the petition on both Southeast and Nicholson.

Finally, CSXT states that it also served a copy of the petition on the City of Atlanta (City), which has requested a right of first refusal to acquire the underlying right-of-way for the purpose of creating a trail following abandonment, and the Atlanta Regional Commission, which supports the City's position. Our records do not indicate that the City has filed a request for a public use condition or for trail use/rail banking, and, therefore, no such conditions will be imposed.

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 from the costly repairs necessary to reinstitute service and of the costs of owning and maintaining the line [49 U.S.C. 10101(5) 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 an abuse of market power. One shipper, Nicholson, has apparently relocated off the line and the sole remaining shipper,

³ Specifically, the work involves: (1) replacing ties at a cost of approximately \$40,000; (2) clearing away asphalt and concrete from the turnouts and other track materials at a cost of \$35,000; (3) repaving work at a cost of \$69,000; and (4) replacing bridge ties on another bridge over Meldrum Street at a cost of \$6,000.

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UTU requests the imposition of labor protective conditions. 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 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 October 3, 1997, in which it notes that the Georgia State Historic Preservation Office (GA SHPO) has expressed the opinion that the line in its entirety, appears to qualify for the National Register of Historic Places. Therefore, SEA recommends that CSXT shall consult with the GA SHPO and shall retain its interest in and take no steps to alter the historic integrity of the line until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. No comments to the EA were filed by the November 3, 1997 due date. Based on SEA's recommendation, we conclude that the proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources. SEA states that following the abandonment, the right-of-way may be appropriate for other public uses under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

It is ordered:

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