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SERVICE DATE – LATE RELEASE OCTOBER 19, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 674X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–  
IN VIGO COUNTY, IN

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: October 19, 2006

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 7.4-mile line of railroad on its Southern Region, Nashville Division, CE&D Subdivision, Riley Spur, from milepost OZD 5.0 (near Terre Haute) to the end of track at milepost OZF 12.4 (near Riley) in Vigo County, IN. Notice of the exemption was served and published in the Federal Register on September 14, 2006 (71 FR 12857). The exemption was scheduled to become effective on October 14, 2006, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by September 25, 2006.

On September 15, 2006, The Indiana Rail Road Company (INRD) filed a formal expression of intent to file an OFA to purchase the entire line, which had the effect of automatically staying the effective date of the exemption for 10 days, until October 24, 2006. INRD simultaneously requested that CSXT provide it with the information prescribed at 49 CFR 1152.27(a), appropriate for a purchase transaction, by no later than October 4, 2006.

On September 21, 2006, Seaside Holdings, Inc. (Seaside) also filed a formal expression of intent to file an OFA to purchase the entire line. Seaside also simultaneously requested that CSXT provide it with the information prescribed at 49 CFR 1152.27(a), including: (1) the most recent report on the physical condition of the line; (2) CSXT's estimate of the net liquidation value (NLV) of the line, with supporting data, including but not limited to identification of the parcels of land underlying the right-of-way (ROW) which are owned in fee and those which are easement grants, the lengths, weight, age and condition of the relay, reroll and scrap rails, the reusable and scrap ties, and any other information deemed relevant to calculate the NLV of the line; and (3) CSXT's minimum purchase price for the line.

On October 12, 2006, INRD timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$307,220, consisting of the net liquidation value of the track and track materials on the line.<sup>1</sup> According to INRD, this is the NLV established by CSXT.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments under NERSA, 354 I.C.C. 472 (1981). In its OFA, INRD provides evidence showing that it has financial resources to acquire and operate the line. Accordingly, INRD is found to be financially responsible.

Because INRD is financially responsible, and has offered assistance, the effective date of the exemption authorizing abandonment will be postponed.

The Board's regulations contemplate that the carrier and a financially responsible person will reach an agreement setting the terms and conditions of purchase. If they do not, either party may request the Board to do so. 49 CFR 1152.27(g). Any person filing a request to set terms and conditions must pay the requisite filing fee, set at 49 CFR 1002.29(f)(26), which currently is \$19,100.<sup>2</sup> An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Request to Set Terms and Conditions" in the lower left hand corner.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on September 19, 2006. In the EA, SEA states that the National Geodetic Survey (NGS) has identified ten station markers that may be affected by the proposed abandonment. Therefore, SEA recommends a condition requiring CSXT to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the markers' possible relocation by NGS.

SEA also states that the U.S. Fish and Wildlife Service (USFWS) has determined that the project is within the range of the Federally endangered Indiana Bat (*Myotis sodalis*) and the Federally threatened Bald Eagle (*Haliaeetus leucocephalus*). USFWS indicates, however, that the proposed project would not likely adversely affect these species. But, the National Wetland Inventory indicates that there are wetlands in the immediate proximity of the proposed abandonment. To avoid or minimize impacts on fish and wildlife resources from salvage activities, USFWS recommends that CSXT: (1) avoid clearing trees or understory vegetation;

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<sup>1</sup> INRD states that, because the line is located on a rail use easement, CSXT assigned no value for net liquidation purposes to the ROW.

<sup>2</sup> The filing fee for a request to set terms and conditions increased to \$19,100 effective April 19, 2006. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services-2006 Update, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

(2) avoid impacts or mitigate unavoidable impacts to wetlands in accordance with the 1991 Memorandum of Agreement among the Indiana Department of Transportation, the Indiana Department of Natural Resources, and the USFWS; and (3) if necessary, implement temporary erosion and siltation control devices such as installation of silt fences or covering exposed areas with erosion control matting or straw. Therefore, SEA recommends imposing a condition requiring that CSXT comply with USFWS's above-mentioned recommendations pertaining to salvage activities.

SEA notes that the U.S. Environmental Protection Agency, Region 5 (USEPA), submitted a number of comments expressing concern regarding removal and salvage methods, final disposition of crossties preserved with creosote, permits related to the Clean Water Act, maintenance of machinery to minimize noise and air pollution, procedures for the prevention and/or control of spills, runoff mitigation practices to be utilized during salvage activities, and recycling of salvaged materials. SEA also notes that CSXT adequately addressed USEPA's concerns in a letter dated August 16, 2006.

CSXT states that, as part of the proposed salvage activities, it intends to remove rail, crossties, and possibly the upper layer of ballast. Salvage would be performed within the right-of-way, and the removal of material would be accomplished by utilizing existing public and private crossings. CSXT further states that no new access roads are contemplated. Crossties and other debris would be transported away from the line and would not be discarded along the right-of-way, in streams or wetlands, or along the banks of waterways. CSXT does not intend to disturb any of the underlying roadbed or perform any activities that would cause sedimentation or erosion of the soil. In addition, CSXT does not anticipate any dredging or use of fill in the removal of the track material. CSXT states that it would take precautions during salvage operations to prevent or control spills from fuels, lubricants, or other pollutant materials from entering any waterways. Therefore, SEA recommends that CSXT be required to conduct salvage activities in the manner it has proposed: (1) perform salvage activities within the right-of-way and utilize existing public and private crossings; (2) transport crossties and other debris away from the right-of-way, streams, wetlands, and banks of waterways; (3) avoid distributing the underlying roadbed and any activities that would cause sedimentation or erosion of the soil; (4) avoid dredging or use of fill in the removal of the track material; and (5) take precautions during salvage operations to prevent or control spills from fuels, lubricants or any other pollutant materials from entering any waterways.

SEA states that the Indiana Department of Natural Resources' Division of Water (IDNR) reviewed the proposed abandonment and recommended that CSXT: (1) implement appropriate measures for controlling erosion and to prevent sediment from entering the stream or leaving the construction site; (2) revegetate all bare and disturbed areas in accordance with its August 8, 2006 letter; and (3) where the railroad berm crosses low-lying wet areas, remove or have notches cut to the surrounding grade at frequent intervals to restore the natural hydrology. Therefore, SEA recommends that CSXT coordinate with IDNR to ensure that appropriate measures are implemented during the proposed salvage activities.

Finally, SEA states that the Indiana Department of Natural Resources' Department of Historic Preservation and Archaeology (the State Historic Preservation Office or SHPO) has not completed its review of the proposed abandonment. Accordingly, SEA recommends that CSXT be required to retain its interest in and take to steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places (National Register) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). SEA also recommends that CSXT be required to report back to SEA regarding the results of any consultations with the SHPO and any other section 106 consulting parties, and that CSXT not be allowed to consummate the abandonment or initiate any salvage activities (including removal of the tracks and ties) until the Board removes this condition.

Comments to the EA were due October 4, 2006. Having contacted CSXT on October 5, 2006, regarding the mitigation measures proposed by IDNR, SEA now believes that consultation between CSXT and IDNR prior to commencement of salvage activities would be appropriate. Accordingly, SEA recommends that the previously recommended condition be modified as follows: to address the concerns of IDNR regarding matters such as erosion control, CSXT shall consult with IDNR prior to commencement of salvage activities to ensure that appropriate measures are implemented during the proposed salvage activities. Accordingly, the conditions recommended by SEA in the EA, with the above modification, will be imposed. In the event that INRD does not acquire the line through an OFA, CSXT will need to comply with these environmental conditions before it can salvage the line.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

Based on SEA's recommendations, 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. The effective date of the exemption is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
3. IF INRD and CSXT cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase price on or before November 13, 2006. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating the portion of this decision relating to the OFA process and allow the abandonment exemption to become effective as conditioned.

4. The following environmental conditions are imposed on the abandonment of the line described above: (1) CSXT shall notify NGS at least 90 days prior to beginning salvage activities in order to plan for the affected geodetic station markers' possible relocation by NGS; (2) to avoid or minimize impacts on fish and wildlife resources, CSXT shall conduct salvage activities in the following manner: (a) avoid clearing trees or vegetation; (b) avoid impacts or mitigate unavoidable impacts to wetlands; and (c) if necessary, implement temporary erosion and siltation control devices; (3) CSXT also shall conduct salvage activities in the following manner: (a) perform salvage activities within the right-of-way and utilize existing public and private crossings; (b) transport crossties and other debris away from the right-of-way, streams, wetlands, and banks of waterways; (c) avoid distributing the underlying roadbed and any activities that would cause sedimentation or erosion of the soil; (d) avoid dredging or use of fill in the removal of the track material; and (e) take precautions during salvage operations to prevent or control spills from fuels, lubricants or any other pollutant materials from entering any waterways; (4) CSXT shall consult with IDNR prior to commencement of salvage activities to ensure that appropriate measures are implemented during the proposed salvage activities; and (5) CSXT shall retain its interest in and take to steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register until the section 106 process of the NHPA has been completed, report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and not file its consummation notice or initiate any salvage activities (including removal of the tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

5. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary