

32355
EB

SERVICE DATE – MARCH 8, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 601X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION– IN LENOIR COUNTY, NC

Decided: March 6, 2002

By petition filed on November 20, 2001, 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 portion of its line of railroad known as the Florence Division, Parmele Subdivision, extending from milepost AA-173.09 to railroad milepost AA-173.70, a distance of 0.61 miles, in Elmer, Lenoir County, NC. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (66 FR 63742) on December 10, 2001. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

According to CSXT, the only shipper that uses the line, PCS Phosphate Co., Inc. (PCS), supports the abandonment.¹ CSXT states that PCS operates an animal feed production facility at the end of the line and intends to purchase the abandoned line to expand its facility. CSXT further states that it will continue to provide service to PCS.

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

¹ CSXT submitted a letter in support from PCS with its petition. CSXT also certifies that it served a copy of its petition on PCS.

also foster sound economic conditions and encourage efficient management by relieving CSXT 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. An exemption will also facilitate PCS's plans to expand its facility in Elmer.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. The line's only shipper, PCS, supports the abandonment and intends to purchase the abandoned line to expand its facility at Elmer. PCS will continue to receive rail service from CSXT. Nevertheless, to ensure that the shipper is informed of our action, we will require CSXT to serve a copy of this decision on PCS within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

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 set forth 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 government 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 18, 2002, and requested comments. No comments to the EA were filed by the February 15, 2002 due date. Based on SEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources. SEA states that, following the line's 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.²

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).

² Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by December 31, 2001.

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

3. An offer of financial assistance (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 18, 2002, 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).

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 April 7, 2002. Petitions to stay must be filed by March 25, 2002; petitions to reopen must be filed by April 2, 2002.

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 March 8, 2003, 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 Burkes.

Vernon A. Williams
Secretary