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SERVICE DATE - JULY 27, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 586X)

CSX TRANSPORTATION, INC.–ABANDONMENT
EXEMPTION–IN McMINN COUNTY, TN

Decided: July 26, 2001

By petition filed on April 10, 2001,¹ 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 .84-mile segment of a line of railroad known as the Athens & Tellico Branch,² extending from milepost OKW 333.40 to milepost OKW 334.24 in Athens, McMinn County, TN. The City of Athens (the City) and the Board of Commissioners of McMinn County (McMinn County Commissioners) each submitted resolutions opposing the abandonment, and the McMinn County Economic Development Authority (the Authority) filed a statement in opposition. The City also requests a public use condition and issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). We will grant the exemption, subject to trail use, public use, and standard employee protective conditions.

BACKGROUND

Athens Supply Company (Athens Supply) is the only shipper located on the line. It received inbound shipments of lumber as follows: 2 carloads in 1999, 1 carload in 2000, and 1 carload in 2001. Because of this infrequent use, CSXT states that the line generally does not receive regular maintenance.³

¹ Notice of the filing was served and published in the Federal Register (66 FR 21444) on April 30, 2001.

² The line is formally designated as Central Region, Appalachian Division, Athens & Tellico Branch, KD Subdivision.

³ According to CSXT's Trainmaster, Ken Goff, Jr., it is extremely cumbersome to provide service when a car is ordered for shipment because maintenance-of-way employees must be reassigned from other projects to inspect the track and cut problematic brush from the right-of-way. For example, Mr. Goff states that, when Athens Supply ordered a car in 2000, it took 4 days to locate employees and 2 more days to perform the necessary maintenance work so that the car could be moved. Exhibit G to the Petition for Exemption.

CSXT submits that the line is in need of considerable repairs. Due to poor track conditions, CSXT placed an embargo on the line on February 14, 2001. According to CSXT, it would cost approximately \$86,600 to restore the line to a minimum safety level.⁴ In view of the limited traffic on the line, CSXT argues that the rehabilitation expense cannot be justified.

CSXT surmises that Athens Supply currently uses truck transportation and submits that the shipper will continue to have that option in the future. CSXT states that Athens Supply was contacted and made aware that the abandonment exemption request was being filed. In addition, Athens Supply was served with a copy of the petition. The resolutions and statements in opposition filed by the City, McMinn County Commissioners, and the Authority generally express concern about the adverse impact that abandonment would have on local industries and potential future economic development in the area.

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 the application process, 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 of the cost of owning and maintaining a line that is in need of substantial rehabilitation and allowing it to use its assets more productively [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power because Athens Supply, the only shipper located on the line, appears to be using alternative transportation and has not opposed the abandonment. Nevertheless, to ensure that the shipper is informed of our decision, we will require CSXT to serve a copy of this decision and notice on Athens Supply within 5 days of the service date 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.

⁴ Tom Willhelm, CSXT's Regional Project Manager of the Central Region, estimates that the following rehabilitation expenses would be necessary to restore the line: \$21,000 to replace approximately 1,200 feet of rail; \$26,600 to replace one-third of the ties (approximately 680 ties); \$17,000 to repair 6 highway-rail grade crossings; and \$22,000 for brush control and ditch repair. Exhibit F to the Petition for Exemption.

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 its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on June 8, 2001, recommending that no environmental or historic conditions be imposed on the abandonment, and requested comments by July 9, 2001. No comments were received in response to the EA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

The City requests that interim trail use/rail banking be imposed under the Trails Act, has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. In reply, CSXT states that it is considering selling a majority of the line for use as industry track. Because of the potential sale, CSXT submits that it is currently only able to negotiate for trail use with regard to the line segment not being considered for use as an industry track. If the potential sale is not finalized, however, CSXT submits that it is willing to negotiate with the City for trail use on the entire line. Because the City's request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to enter into trail use negotiations, we will issue a NITU for the subject line.⁵ The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. In addition to trail use, the City also requests that a 180-day public use condition be imposed, precluding CSXT from: (1) disposing of the corridor, other than the tracks, ties, and signal equipment; and (2) removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels. The City states that the subject rail

⁵ CSXT does not indicate what portion of the .84-mile line is being considered for sale as an industry track. In view of CSXT's willingness to negotiate with the City for a trail on the entire line, in the event the sale falls through, we will issue the NITU for the entire line.

corridor would make an excellent recreational trail connecting two public parks, Veteran's Memorial Park and Knox Park. In addition, the City submits that the corridor provides important wildlife habitat and green space. It seeks a 180-day period to review title information, complete a trail plan, and conduct negotiations with the carrier.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The City has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition also will be imposed, commencing from the effective date of this decision and notice. If a trail use agreement is reached on a portion of the right-of-way, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested persons to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with the City but may engage in negotiations with other interested persons.

The parties should note that the operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

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 by CSXT of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), the terms and conditions for implementing interim trail use/rail banking set forth below, and the condition that CSXT shall leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (but not track and track materials), for a period of 180 days from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use.

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

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, CSXT may abandon the line.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 6, 2001, 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 the filing fee, which is currently set at \$1,000. See 49 CFR 1002.2(f)(25).

8. 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.”**

9. Provided no OFA has been received, this exemption will be effective on August 26, 2001. Petitions to stay must be filed by August 13, 2001, and petitions to reopen must be filed by August 21, 2001.

10. 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 July 27, 2001, 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.

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By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary