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SERVICE DATE – OCTOBER 24, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 727X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN WASHINGTON
COUNTY, MD.

Digest¹: This decision allows CSX Transportation, Inc. (CSXT) to end its common carrier obligation to provide rail service over a 0.76-mile rail line in Washington County, Md., subject to standard employee protection conditions. It also imposes an environmental condition requiring CSXT to consult with the National Geodetic Survey prior to removing railroad tracks and ties on the line.

Decided: October 23, 2013

By petition filed on June 28, 2013, 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 0.76-mile rail line between milepost BAW 19.44 and milepost BAW 18.68 in Hagerstown-St. James, Washington County, Md. (the Line). Notice of the petition was served and published in the Federal Register on July 18, 2013 (78 Fed. Reg. 42,998).² The exemption will be granted subject to environmental and standard employee protective conditions.

BACKGROUND

According to CSXT, it is seeking to abandon the Line with the consent of Conservit, Inc. (Conservit), the sole shipper on the Line.³ Upon receiving abandonment authority, CSXT intends to reclassify the Line as spur track and sell the property to Conservit. According to CSXT, Conservit plans to improve the track and redevelop the site so that Conservit can load and

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 The Board's notice provided that a final decision would be issued by October 16, 2013, 110 days after the petition was filed. Because of the recent shutdown of the Federal government due to a lapse in appropriations, issuance of a final decision has been delayed. Accordingly, all future deadlines shall be based on the date of service of this final decision and not the 110-day deadline.

³ As part of its Petition, CSXT attached a letter from Conservit indicating that Conservit has been advised of this abandonment proposal and does not oppose it. CSXT Pet., Ex. H.

weigh its own cars on its own property before tendering those cars to CSXT. CSXT states that it will continue to meet Conservit's common carrier requirements.⁴

CSXT states that it will save \$7,600 per year in annual maintenance costs if abandonment is granted and estimates that the valuation of the property is about \$111,735.⁵

DISCUSSION AND CONCLUSIONS⁶

Under 49 U.S.C. § 10903, a rail line may not be abandoned without prior approval from the Board. 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 of CSXT's abandonment proposal under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy in this case. Once abandoned, CSXT intends to sell the Line to the lone shipper on the Line for the shipper's use to load and weigh its own cars before tendering the cars to CSXT. CSXT will continue to serve the shipper. By minimizing the administrative expense of the abandonment application process, an exemption would minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). Through abandonment of the Line, CSXT would be able to avoid maintenance-of-way costs associated with retaining the Line, while accommodating the transportation needs of the remaining shipper on the Line. Thus, an exemption would also foster sound economic conditions and encourage efficient management by permitting the rationalization of an unnecessary rail line, consistent with 49 U.S.C. §§ 10101(5) and (9). Other aspects of the rail transportation policy would not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power.⁷ CSXT states that Conservit, the only shipper on the Line, will continue to

⁴ See CSXT Pet. 3-4.

⁵ *Id.* 4. According to CSXT, this number represents a net liquidation value of \$30,859, less income tax consequences of \$11,726, plus working capital of \$92,603. According to the Board's calculations that equals \$111,736, not \$111,735, a *de minimis* difference.

⁶ The Board has not received any requests for the imposition of a public use condition under 49 U.S.C. § 10905, nor has it received any requests for the issuance of a Notice of Interim Trail Use for the Line under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.

receive rail service and that Conservit approves of the proposed transaction. Nevertheless, to ensure that Conservit is informed of our action, we will require CSXT to serve a copy of this decision on Conservit so that it is received by the shipper within five days of the service date of this decision and to certify contemporaneously to the Board that it has done so.

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its 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, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979) (Oregon Short Line).

Environmental Review. CSXT has submitted environmental and historic reports and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. § 1105.11. The Board’s Office of Environmental Analysis (OEA) has examined the environmental and historic reports, verified CSXT’s data, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA issued an Environmental Assessment (EA) in this proceeding on August 27, 2013, recommending that one condition be imposed on any decision granting abandonment authority. Specifically, in the EA, OEA states that the U.S. Department of Commerce, National Geodetic Survey (NGS) has noted that there is one geodetic station marker in the area of the proposed abandonment. Thus, OEA recommends a condition that CSXT consult with NGS at least 90 days prior to the beginning of any salvage activities that would disturb or destroy any geodetic station markers.

Comments to the EA were due by September 25, 2013. No comments were received. Accordingly, we will impose the condition recommended by OEA in the EA. Based on OEA’s recommendation, the Board concludes that the proposed abandonment, if implemented as conditioned, would not significantly affect either the quality of the human environment or the conservation of energy resources.

(. . . continued)

⁷ Given the market power finding here, the Board need not determine whether the proposed abandonment is limited in scope.

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 and the condition that CSXT shall consult with NGS at least 90 days prior to the beginning of any salvage activities that would disturb or destroy any geodetic station markers.

2. CSXT is directed to serve a copy of this decision on Conservit so that it is received within five days of the service date of this decision and to certify contemporaneously to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 4, 2013, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee of \$1,600. See 49 C.F.R. § 1002.2 (f)(25).⁸

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 November 23, 2013. Petitions to stay must be filed by November 8, 2013. Petitions to reopen must be filed by November 18, 2013.

6. Pursuant to the provisions of 49 C.F.R. § 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 October 24, 2014, 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 one-year period, the notice of consummation

⁸ Consistent with our precedent, and given the apparent lack of need for this Line by any shipper other than Conservit, any person seeking to file an OFA must provide evidence that there is some shipper other than Conservit that would make use of common carrier service. See, e.g., Union Pac. R.R.—Aban.Exemption—in Pottawattamie Cnty., Iowa, AB 33 (Sub-No. 300X) (STB served January 20, 2012); CSX Transp.—Aban. Exemption—in Chesterfield and Darlington Cntys, S.C., AB 55 (Sub-No. 703X) (STB served Jan. 19, 2011).

must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

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