

SERVICE DATE - APRIL 24, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 588X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN POLK AND  
McMINN COUNTIES, TN

Decided: April 23, 2002

By petition filed on April 23, 2001,<sup>1</sup> 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 43.47-mile portion of its line of railroad in the Southern Region, Atlanta Division, Etowah Old Line Subdivision, between milepost OKX 339.00 in Etowah and milepost OKX 382.47 in Copperhill, in McMinn and Polk Counties, TN. Comments in opposition were filed by the McMinn County Economic Development Authority (the Authority), the Chattanooga Area Regional Council of Governments, Southeast Tennessee Development District (the Council), Glenn Springs Holdings, Inc., a subsidiary of Occidental Petroleum (Glenn Springs), the Tennessee Overhill Heritage Association (the Association), the Office of Polk County Executive (Polk County), the Etowah Area Chamber of Commerce (Chamber of Commerce), the City of Etowah (the City), and eight individuals.<sup>2</sup> CSXT replied to the comments of the Association and the Council. Requests for the issuance of a notice of interim trail use (NITU) and imposition of a public use condition were filed by the United States Department of Agriculture, Forest Service, Cherokee National Forest (Forest Service), and Polk County.

On August 7, 2001, CSXT filed a petition requesting that the proceeding be held in abeyance. Because of the local interests in pursuing possible alternative uses for the line, CSXT needed additional time to undertake discussions with the Forest Service and other interested parties to explore and promote the potential for an offer of financial assistance (OFA) to preserve the rail line for future freight service, as well as the post-abandonment trail use of the right-of-way, and to address other environmental issues raised.<sup>3</sup> CSXT stated that it would report to the Board's Section of Environmental Analysis (SEA) on the discussions and their outcome and then

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on May 11, 2001 (66 FR 24182).

<sup>2</sup> Helen Chamberlain, Joanne F. Grimes, Dianne Lucas, J. E. Needich, Holly Nicholson, Raymond K. Nicholson, Carolyn M. Rand, and Lynne Walsh.

<sup>3</sup> In a letter dated July 20, 2001, the Forest Service had commented that a number of environmental issues related to the proposed abandonment's potential impact on the Cherokee National Forest had not been properly addressed in the Board's environmental assessment (EA).

file a further petition with the Board. By decision served on August 9, 2001, CSXT's request was granted and the proceeding was held in abeyance until further notice. On November 20, 2001, CSXT filed a petition to reopen the proceeding in which it described the efforts it has made to resolve the outstanding issues. In view of these efforts, and CSXT's continued commitment to address future problems, we will reopen the proceeding at this time, and grant the exemption, subject to environmental, public use, trail use, and standard employee protective conditions.

## BACKGROUND

There is no rail traffic on the line. Marsulex, Inc. (Marsulex), the only shipper on the line, recently ceased operating its facility located at the end of the line at Copperhill.<sup>4</sup> According to CSXT, Intertrade Holdings, Inc., the owner of Marsulex's facility, will not require rail service in the future. CSXT states that it expects no future freight business to develop on the line.

No comments in opposition to the petition for exemption were filed on behalf of a shipper with a present need for rail service. We received comments from various community interests and concerned citizens. Some of the comments address the impact the loss of rail service may have on industrial development in the area while others are primarily concerned with tourism in the affected area and trail use or other recreational uses for the line. The commenters generally opposed the proposed abandonment, arguing that the timeline for a petition for exemption did not allow sufficient opportunity for those working towards a plan for alternative uses for the rail corridor, including its use as a tourist railroad, to achieve their goals. The comments of the parties are described more fully below and are then addressed in this decision.

## POSITIONS OF THE PARTIES

The Authority, a public/private industrial development organization that serves McMinn County and its individual communities, is responsible for creating new job opportunities and increasing capital investment by recruiting new businesses and providing assistance to resident companies. It submits that the line serves an existing company (J. M. Huber Corp.) in McMinn County, south of Etowah, near the community of Delano, and that potential industrial sites exist along the track proposed for abandonment that the Authority may designate for industrial development in the future. It also submits that the track could be used for excursion trains through the scenic mountains of Southeast Tennessee. The Authority states that approval of the abandonment will adversely affect its work and the region's economic base and urges denial of the petition.

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<sup>4</sup> Traffic data submitted by CSXT show that Marsulex shipped 94 carloads in 2001, 6,792 carloads in 2000, and 7,022 carloads in 1999. The principal commodity transported over the line was sulphuric acid.

The Council, the Association, Polk County, the City, the Chamber of Commerce, and Glenn Springs are also concerned about the economic impact abandonment may have on the area. The Tennessee Copper Basin historically has been served by rail, and future economic development will likely require rail access because truck service is problematic due to the curvy and dangerous nature of U.S. Highway 64 through the rugged Ocoee River Gorge. The Council and Polk County state that the environmental clean-up now underway in the Copper Basin includes plans for investment in infrastructure to attract industry to the area. All of these entities stress the importance of tourism to the area's economy and seek to have the line retained as a scenic railroad.<sup>5</sup> In that event, it will be preserved for possible future use if industrial development occurs.

The eight individual commenters, who are avid trail users, object to the petition for exemption, but support abandonment of the line as an opportunity to add a linear trail in the State of Tennessee.<sup>6</sup> They state that, in addition to providing recreation to hikers, runners, mountain bikers, and equestrians in an ecologically sound way, a new trail would provide relief to already overburdened trails and parks in the State and benefit the economy of Etowah and Copperhill.

In its reply, CSXT states that, although excursion train operators have expressed interest in the line, it is not economically viable because there are no freight rail customers located on it. It asserts that, because most of the line runs through forested, mountainous territory, it is unlikely that the property adjacent to the majority of the line would ever be developed by freight rail customers.<sup>7</sup>

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<sup>5</sup> The Council points out that the depot in Etowah has already been restored and is a tourist attraction.

<sup>6</sup> These form letters suggest that our procedures for processing petitions for exemption did not allow sufficient time to plan for the best use of the corridor. We note that the time frames for processing abandonment applications and petitions for exemption are the same. In this case, our decision to hold the proceeding in abeyance gave the trail proponents even more time to perfect their plans.

<sup>7</sup> CSXT states that it sent two representatives to a public meeting to educate the local community about the abandonment process and to provide those in attendance with a general timeline explaining the exemption process and a sample trail use request. CSXT indicated its willingness to negotiate with a trail entity or excursion train operator in accordance with the schedule set by the Board. In addition, CSXT sponsored a "high rail" tour of the line on May 24, 2001.

In its petition to reopen, CSXT describes a meeting and discussions held on September 19, 2001, with the Old Line Railroad Coalition (Coalition)<sup>8</sup> and the Forest Service. At the meeting, CSXT explained the OFA procedures and that, if the proposed abandonment were granted, the Coalition would have the opportunity to file an OFA with the Board at the appropriate time. CSXT informed the Coalition that, if it files an OFA, CSXT would be willing to sell the line for the net liquidation value and would leave the track materials in place for 6 months from the service date of the Board's decision approving the abandonment to allow the Coalition time to obtain the funding.<sup>9</sup> CSXT states that, if no OFA is filed, CSXT would consider donating a portion of the right-of-way to the Coalition for trail use. If a trail agreement is reached, CSXT states that it would salvage only the rail materials and ties, leaving the ballast and bridges in place.<sup>10</sup>

### 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 of CSXT's proposed abandonment 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 from the costs of owning and maintaining a line that is no longer used and allowing it to apply its assets more productively elsewhere on its rail system [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 the abuse of market power because there are no active shippers on the line. The only shipper, Marsulex, recently closed its facility. To ensure that Marsulex is informed of our action, we will require

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<sup>8</sup> The purpose of the Coalition is to preserve the rail line in its entirety for future freight service and/or possibly scenic railroad/tourist operations.

<sup>9</sup> CSXT also states that it is agreeable to leaving the rail assets in place for an additional year for a holding or carrying cost fee of 15% of the value of the assets.

<sup>10</sup> CSXT hired Holley Consultants, Inc., an engineering and environmental consulting firm, to investigate the key areas of the Forest Service's concerns and prepare a report (the Holley Report). CSXT attached a copy of the Holley Report to its petition to reopen.

CSXT to serve a copy of this decision on Marsulex within 5 days of the service date and certify to us that it has done so. With regard to the commenters' concerns that future industrial development may result in a demand for rail service, there is no evidence to suggest that such development is imminent or to permit us to determine that a need for rail service will exist in the near future. 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 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 abandonment. See 49 CFR 1105.11. SEA has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an EA on June 22, 2001. In the EA, SEA recommended that conditions be imposed on any decision granting abandonment authority. The first condition recommended by SEA addresses the concern of the Tennessee State Historic Preservation Officer (SHPO) that there may be structures on the line that are potentially eligible for inclusion in the National Register of Historic Places and that these structures may be adversely affected by the proposed abandonment and salvage of the line. Because of outstanding historic resource concerns, SEA recommends that a condition be imposed requiring CSXT to consult with the SHPO and to 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. The second condition recommended by SEA addresses the concern of the U.S. Department of Commerce, National Geodetic Survey (NGS), that the proposed abandonment may affect 31 geodetic station markers. SEA recommends that a condition be imposed requiring CSXT to notify NGS at least 90 days prior to any salvage activities that may disturb or destroy these markers so that plans can be made for their relocation.

Comments to the EA were due on July 23, 2001. In response to the EA, comments were filed by the Forest Service and Lynne Walsh, Region 3 vice-president of the Tennessee Horse Council. The Forest Service's concerns are: (1) the effect of the abandonment on the surrounding environment because of hazardous materials; (2) the effect of the salvage process on the surrounding landscape and endangered species; and (3) the effect of the abandonment on potential historical properties. Lynne Walsh opposes the abandonment and supports conversion of the line to a recreational trail.

SEA has reviewed the comments and CSXT's petition to reopen. It recommends the imposition of five additional conditions. SEA states that it consulted with the Forest Service about the petition to reopen, including the Holley Report.<sup>11</sup>

The Forest Service is concerned about the residual effects associated with past hazardous materials spills, bridges painted with lead-based paint, creosote-treated components, and hazardous materials escaping from passing rail cars. CSXT states that the Holley Report concludes the following: no Phase II Environmental Study is required on this line; there are no signs of vegetative stress, soil discoloration, or other impairment as a result of the two hazardous material spills cited by the Forest Service; any lead paint on bridges introduced into the rivers and streams as a result of abandonment and salvage would be minute; removal of crossties and timbers containing creosote during salvage would not be expected to cause leaching of harmful chemicals into the environment; and hazardous chemicals escaping from passing rail cars would already have dissipated into the atmosphere. CSXT states that it will follow the applicable containment procedures of the Occupational Safety and Health Administration (OSHA) and the Tennessee Department of Transportation (TNDOT) for the removal of any bridges, as well as the procedures of any other regulatory agency having authority over bridge removal.

With regard to the Forest Service's second concern involving damage to the surrounding landscape and endangered species that may occur during the removal of rail and ties, CSXT reaffirmed its procedure for the removal of track materials and crossties, which it follows in every abandonment. CSXT states that this procedure preserves the existing routes of water flow and drainage, which prevents disturbance of the underlying roadbeds that would cause sedimentation or erosion of the soil. It states that it does not anticipate any dredging or use of fill in the removal of track material and plans to use the right-of-way for access, as well as existing public or private crossings. All materials will be transported away from the rail line, and appropriate measures will be implemented to prevent spills from fuels or other pollutant materials from entering any waterways.

The Forest Service states that the rail bed contains acidic rock as well as leaded fuels and other chemicals. The Forest Service recommends that the limestone ballast be left in place and that only the rails and ties be removed. According to the Forest Service, such limited salvage would allow the limestone ballast to continue to neutralize the acidic minerals and chemicals and help to prevent erosion along the sensitive and steep side slopes of the Hiwassee River. Also, because of past landslides, the Forest Service requests that CSXT leave in place the steel piles

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<sup>11</sup> SEA sent a letter to the Forest Service, dated December 18, 2001, seeking confirmation that the Forest Service agrees with the findings in the Holley Report, the two conditions previously recommended, and the additional recommended conditions. In a letter dated January 18, 2002, the Forest Service states that it believes that the Holley Report satisfactorily addresses several areas of concern and that it supports SEA's recommended conditions.

with timber wood retaining walls. Therefore, in the event that salvage of the line takes place, as discussed above, and in response to the Forest Service's concerns, SEA recommends the new condition that CSXT shall limit salvage to the removal of rails and ties, leaving the ballast material in the rail bed and all steel piles with timber wood retaining walls in place.

The Forest Service also states that abandonment of the line and removal of rails and ties would allow uncontrolled access by four-wheel drive and off-road vehicles to the Cherokee National Forest and the Hiwassee River Gorge. To help prevent uncontrolled access to the forest, the Forest Service requests that CSXT identify any and all access areas resulting from abandonment and design and install barriers at these access points. After further discussion with the Forest Service, SEA states that the Forest Service's principal concern is preventing access, due to safety hazards, to the trestles and supporting structures associated with the "Hiwassee Loop." Accordingly, SEA recommends the new condition that, prior to any salvage, CSXT shall consult with the Forest Service to identify those access points along the rail line that present particular safety hazards and work with the Forest Service in developing measures (such as earthen barriers) to prevent general access.

The Forest Service requests that, following removal of rails and ties, mitigation measures be taken in order to protect the scenic value of this area, especially the Hiwassee River Gorge and the John Muir National Recreation Trail, which follows the bank opposite the rail line. Accordingly, SEA recommends the new condition that, prior to and during any salvage, CSXT be required to consult with and notify the appropriate Forest Service personnel to ensure that: (1) any seed mixture used during the process be Forest Service-approved; (2) any trees or vegetation on Forest Service property adjacent to the right-of-way not be cut or damaged and any vegetation alterations be Forest Service-approved; (3) exposure or creation of cut banks be kept to a minimum and any installation and restoration of cut banks during salvage be Forest Service-approved; and (4) the grade of the rail bed be leveled, if possible, following removal of rails and ties.

The Forest Service also requests that mitigation measures be imposed to protect Ruth's Golden Aster (a federally listed endangered species), which may occur down-slope from the rail line and which could be impacted by any debris escaping from the right-of-way during salvage activities. Accordingly, SEA recommends the new condition that, to protect Ruth's Golden Aster, CSXT shall direct its salvage contractor to control all salvage activities, and specifically, to keep any salvage materials and debris created during salvage on the right-of-way.

The Forest Service's final concern relates to the historic significance of the line. SEA has already recommended that a section 106 condition be imposed on any decision granting abandonment and believes that this condition addresses the Forest Service's concerns as well as the concerns of the SHPO. SEA states that it has consulted with the SHPO and CSXT regarding this issue and will continue to do so. In its petition to reopen, CSXT states that it is willing to do whatever is appropriate to complete the section 106 process.

CSXT states that, if there is no successful OFA, or if a trail agreement is not negotiated, it plans to salvage all structures on the line. In that case, SEA believes that not only would the above-outlined conditions be appropriate, but that a condition should also be imposed requiring CSXT, when salvaging and removing the bridges, to comply with procedures set by OSHA and TNDOT regarding lead containment. Accordingly, SEA recommends the following new condition: to protect the waters of the Hiwassee River during the salvage and removal of bridges, CSXT shall comply with procedures set by OSHA, U.S. Department of Labor, and TNDOT.<sup>12</sup>

We will impose the conditions recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

On May 30, and May 31, 2001, the Forest Service and Polk County, respectively, filed requests for interim trail use/rail banking under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). Each has submitted a statement of willingness to assume financial responsibility for the right-of-way, and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. By letter filed on June 18, 2001, CSXT states that is willing to negotiate with Polk County.<sup>13</sup> Polk County's request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to enter into negotiations. Therefore, we will issue a NITU for the line described above. 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. 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 the EA that the right-of-way may be suitable for other public uses following abandonment. As noted above, the Forest Service and Polk County have also requested that a 180-day public use condition be imposed on the line. They request that CSXT be precluded from: (1) disposing of the corridor, other than the tracks, ties and signal equipment,

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<sup>12</sup> Although the Board cannot mandate the terms of maintenance in a trail use agreement, the parties to the agreement could, in response to this issue, voluntarily require a program to maintain the painted surfaces of the bridges to prevent erosion and flaking of any lead-based paint.

<sup>13</sup> In a letter filed on July 2, 2001, CSXT states that the Forest Service is content to be treated as a backup trail user. CSXT states that it intends to negotiate only with Polk County at this time, but if CSXT and Polk County are unable to reach a mutually acceptable agreement, CSXT would be willing to negotiate with the Forest Service.

except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts and tunnels.

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 Forest Service and Polk County have 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 on the line to be abandoned, 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 person to acquire the 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 Forest Service and Polk County, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public 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, OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use.<sup>14</sup> 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 in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that CSXT shall: (1) 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

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<sup>14</sup> On May 18, 2001, SCTRR, LLC filed a notice of intent to file an OFA under 49 CFR 1152.27(c)(2) to purchase the line, but withdrew its notice on June 5, 2001.

from the effective date of this decision and notice to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; (2) comply with the interim trail use/rail banking procedures set forth below; (3) consult with the SHPO and 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; (4) notify NGS at least 90 days prior to any salvage activities that may disturb or destroy the geodetic station markers identified on the line so plans can be made for their relocation; (5) limit salvage to the removal of rail, ties, and bridges, leaving the ballast material in the rail bed and all steel piles with timber wood retaining walls in place; (6) consult with the Forest Service, prior to any salvage, to identify those access points along the rail line which present particular safety hazards and work with the Forest Service in developing measures (such as earthen barriers) to prevent general access; (7) consult with and notify the appropriate Forest Service personnel to ensure that: (a) any seed mixture used during the process be Forest Service-approved; (b) any trees or vegetation on Forest Service property adjacent to the right-of-way not be cut or damaged and any vegetation alterations be Forest Service-approved; (c) exposure of or creation of cut banks be kept to a minimum and any installation and restoration of cut banks during salvage be Forest Service-approved; and (d) the grade of the rail bed be leveled, if possible, following removal of rails and ties; (8) direct its salvage contractor to control all salvage activities, and specifically, to keep any salvage materials and debris created during salvage on the right-of-way to protect Ruth's Golden Aster, which may occur down-slope from the rail line; and (9) comply with procedures set by OSHA, U.S. Department of Labor, and TNDOT regarding lead containment to protect the waters of the Hiwassee River during the salvage and removal of bridges.

2. CSXT is directed to serve a copy of this decision on Marsulex within 5 days after the service date of this decision and to 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 fully abandon the line, provided the conditions imposed above are met.

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 May 3, 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 the filing fee, which currently is set at \$1,100. 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 May 24, 2002. Petitions to stay must be filed by May 9, 2002, and petitions to reopen must be filed by May 20, 2002.

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 April 24, 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 no 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