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SERVICE DATE - SEPTEMBER 25, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 563X)

CSX TRANSPORTATION, INC.--ABANDONMENT
EXEMPTION--IN HARRISON COUNTY, WV

Decided: September 22, 1998

By petition filed June 8, 1998, 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 0.87-mile portion of its line of railroad known as the WVA&P Subdivision, extending between milepost 1.23 and milepost 2.1, in Clarksburg, Harrison County, WV (the Line). Notice of the institution of an exemption proceeding was published in the Federal Register at 63 FR 34960 on June 26, 1998. On June 23, July 15, and August 17, 1998, Hartland Planing Mill Company (Hartland) filed opposition to the proposed abandonment and requested an oral hearing. The city of Clarksburg and the Harrison County Commission also filed letters opposing the abandonment. CSXT filed a reply on August 7, 1998. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the petition, subject to labor protective conditions.

PRELIMINARY MATTER

Hartland's request for oral hearing will be denied. An oral hearing does not appear necessary for the development of a complete and accurate record. No showing of a need to observe witness demeanor or to cross examine witnesses has been made here.

POSITION OF THE PARTIES

CSXT currently operates the WVA&P Subdivision as part of its Cumberland Coal Business Unit. The proposed abandonment involves the terminal 0.87-mile portion of the WVA&P Subdivision that connects to the Bridgeport Subdivision in Clarksburg, WV.

According to CSXT, only one shipper, Hartland, is located on the Line, at milepost 2.1. CSXT states that traffic for Hartland consists of occasional inbound carloads of lumber and gypsum wallboard and that there are no outbound shipments. Traffic data submitted by CSXT shows that Hartland received no traffic for 1990, 1991, and 1993; 2 carloads in 1992; 6 carloads in 1994; 1 carload in 1995; 4 carloads in 1996; and 8 carloads in 1997. CSXT points out that this averages to less than 3 carloads per year over the last 8 years.

CSXT claims that the entire rail line, including a bridge, Bridge 1A at milepost 1.6, is in extremely poor condition and will require extensive repairs within the next 12 months if operations are to continue. In a verified statement, CSXT witness J.D. Conley estimates that CSXT would

need to spend \$91,000 for installation of crossties, as well as undertaking ditching, brush cutting, switch work, and anchor/spiking work. In addition, CSXT witness G.A. Simpson submitted a verified statement indicating that needed repairs to Bridge 1A total \$110,275 and must not be delayed later than 1999. Thus, CSXT estimates that it would need to spend a total of \$201,275 to keep the Line in operation. Hartland does not dispute that \$201,275 must be spent to keep the line in operation. Rather it argues that this maintenance should have been done over a number of years. CSXT counters that that simply would have exacerbated its prior losses.

CSXT replied that it would not be a prudent use of its resources to spend over \$200,000 to maintain a line that averages less than 3 carloads a year. In a verified statement, CSXT witness Nikki M. Eskow states that an economic analysis of the Line was done, which indicated that, even if traffic levels were to increase to 20 carloads a year, this line would still experience a loss from operations.

CSXT asserts that Hartland has adequate rail and motor transportation alternatives available. Ms. Eskow indicates that CSXT personnel have met with Hartland to offer other CSXT rail transportation alternatives, i.e., its TransFlo Yard facility and its team track on Baltimore Avenue, located within a mile of Hartland's facility. CSXT asserts that Hartland could use motor carriers exclusively or seek to acquire the Line for continued rail service.

Hartland avers that it does not have transportation alternatives. Mr. Steve Turner, President of Hartland, claims that motor carrier transportation is cost prohibitive and would run him out of business. He says truck freight would increase some material costs from 7% to 18%. Mr. Turner asserts that use of the CSXT team track facilities would require two forklifts, 1 tow truck, 2 trucks, and 5 men for 3 evenings at a cost of \$2,746.63, while current rail service requires only 2 men and one forklift at a cost of \$310.20.

The City and the County generally support Hartland and express concern that the loss of the rail line will impact the local economy and its ability to attract future economic development. On July 20, 1998, the West Virginia State Rail Authority notified CSXT and the Board that it was making an offer of financial assistance to either subsidize or purchase the Line for continued rail service.¹

¹ An OFA is due 120 days after the filing of the petition or 10 days after service of a Board decision, whichever occurs sooner. Although an OFA may be filed and served at any time after the filing of the abandonment petition for exemption, once a decision is served granting the petition, the Board must be notified that an offer has previously been submitted. See 49 CFR 1152.27(c)(1)(A) and (B). Also, the OFA must include certain information as set out at 49 CFR 1152.27(c)(ii).

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board 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.

We conclude that detailed scrutiny of this transaction under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the abandonment process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Moreover, an exemption will permit CSXT to avoid the costs of maintaining this little used line and to apply its assets more productively elsewhere on its system, thereby promoting safe and efficient rail transportation, fostering sound economic conditions, and encouraging efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Because the sole shipper has made little use of the Line over the last 8 years and appears to have adequate rail and motor transportation alternatives available, we find that regulation is not necessary to protect shippers from an abuse of market power. While Hartland's transportation costs may increase as a result of the abandonment, it is well settled that a railroad will not be required to operate a segment of trackage at a loss simply to prevent shippers from incurring higher transportation costs by truck. See Southern Pac. Co. Abandonment, 320 I.C.C. 38, 41 (1963).

To ensure that the shipper is informed of our decision, we will direct CSXT to serve a copy of this decision on Hartland within 5 days of the service date of this decision and to 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.

UTU requests imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

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. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effect of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) on August 7, 1998, recommending that no environmental or historic conditions be imposed on the abandonment. No comments were filed 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 conservation of energy resources. Although SEA has indicated that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.²

It is ordered:

1. Hartland's request for an oral hearing is denied.
2. 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 0.87-mile rail line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).
3. CSXT must serve a copy of this decision on Hartland within 5 days after the service date of this decision and certify to the Board that it has done so.
4. An OFA under 49 CFR 1152.27(c)(1)³ to allow rail service to continue must be received by the railroad and the Board by October 5, 1998, 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).
5. 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.**"
6. Provided no OFA has been received, this exemption will be effective on October 25, 1998. Petitions to stay must be filed by October 13, 1998. Petitions to reopen must be filed by October 20, 1998.
7. 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

² Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by July 16, 1998.

³ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

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abandoned the Line. If consummation has not been effected by CSXT's filing of a notice of consummation by September 25, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any 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 Owen.

Vernon A. Williams
Secretary