

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 698X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN  
CLARK, FLOYD, LAWRENCE, ORANGE, AND WASHINGTON COUNTIES, IN

Decided: April 7, 2010

By petition filed on December 18, 2009, 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 discontinue service over a 62.3-mile line of railroad on its Northern Region, Louisville Division, Hoosier Subdivision, between milepost 00Q 251.7, near Bedford, and milepost 00Q 314.0, near New Albany, in Clark, Floyd, Lawrence, Orange, and Washington Counties, IN (the Line). Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register on January 7, 2010 (75 Fed. Reg. 1010), instituting an exemption proceeding. We will grant the petition for exemption, subject to the standard employee protective conditions.

BACKGROUND

According to CSXT, L. Thorn Company, Inc. (Thorn), a manufacturer and distributor of brick, stone, and concrete masonry units, is the only active shipper on the Line. Thorn shipped 17 carloads in 2007, 3 in 2008, and none in 2009. CSXT asserts that Thorn has access to truck and truck-rail transload service as alternatives to rail and is currently using them. CSXT states that it was handling its own overhead traffic over the Line for a number of years, but rerouted that traffic in 2007.

CSXT points out that The Indiana Rail Road Company (INRD), a CSXT subsidiary, has trackage rights over the Line.<sup>1</sup> CSXT states that INRD formerly routed five trains per week over the Line, but rerouted them in July 2009. According to CSXT, pursuant to the trackage rights

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<sup>1</sup> The Interstate Commerce Commission ordered the Louisville and Nashville Railroad Company (L&N), a predecessor to CSXT, to grant the trackage rights to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a predecessor to the Soo Line, as a condition to the merger of the Monon Railroad into the L&N. Louisville & N. R. Co.—Merger—Monon Railroad, 338 I.C.C. 134, 185-86 (1970). The Board approved INRD's acquisition of the trackage rights in The Indiana Rail Road Company—Acquisition—Soo Line Railroad Company, STB Finance Docket No. 34783 (STB served April 11, 2006).

agreement, INRD contributed to maintenance costs of the Line. When INRD rerouted its trains, however, CSXT lost its major source of revenue.<sup>2</sup>

CSXT states that it is seeking discontinuance authority here to avoid the costs of maintaining and operating the Line in the face of substantially diminished traffic. CSXT projects only 3 carloads of traffic on the Line in 2010. It anticipates an avoidable forecast year loss of \$310,199<sup>3</sup> and a subsidy year loss of \$961,143.<sup>4</sup> CSXT adds, however, that it will not remove track and material from the Line, and that it is hopeful that sufficient traffic will develop in the future to warrant the resumption of service.

On January 12, 2010, Radius Indiana (Radius), an economic development corporation whose service area includes Orange, Washington, and Lawrence Counties, filed a letter with the Board indicating that it may submit an offer of financial assistance to subsidize service and, to that end, has requested financial information from CSXT. On February 25, 2010, CSXT filed a copy of a letter that it sent to Radius responding to that information request.

Congressman Baron P. Hill of Indiana filed a letter with the Board on January 28, 2010. In the letter, Congressman Hill expressed his concern that the discontinuance will harm Southern Indiana's economy, because it will reduce communities' ability to recruit and retain new business investments. Douglas England, Mayor of New Albany, IN, submitted correspondence expressing concern over the potential loss of rail service.<sup>5</sup>

Board staff held a public meeting on March 5, 2010 in Salem, IN to hear interested persons' views regarding the discontinuance.<sup>6</sup> A number of people spoke. Gene McCracken, the

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<sup>2</sup> According to CSXT, in the base year ending June 30, 2009, of the \$971,733 in total revenue attributable to the Line, INRD paid \$965,964 for its overhead use of the Line under the trackage rights. Preslar V.S., Ex. 1 to CSXT petition.

<sup>3</sup> The avoidable forecast year loss was calculated by subtracting total revenues from total avoidable costs. It represents CSXT's estimate of the money that CSXT would lose in the coming year if had to operate the line. Preslar V.S., Ex.1.

<sup>4</sup> The subsidy year loss was calculated in the same manner, but the railroad added opportunity costs of \$650,920 representing its economic loss from foregoing a more profitable alternative use of its assets. Thus, this figure shows the railroad's losses both from operations and from foregoing the alternative use of the capital sunk in the line, chiefly track and real estate. Preslar V.S., Ex. 1.

<sup>5</sup> Correspondence has been placed in the public docket, even if it has not been served on all parties. However, pursuant to 49 CFR 1104.12, every document filed with the Board should include a certificate showing simultaneous service on all parties of record, if the filer intends for the document to be considered in the Board's evaluation of the merits of the proceeding.

<sup>6</sup> For administrative convenience purposes only, at the same meeting Board staff also heard comments in a related docket, The Indiana Rail Road Company—Abandonment Exemption—In Martin and Lawrence Counties, IN, STB Docket No. AB-295 (Sub-No. 7X)

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Executive Director for the Lawrence County Economic Growth Council; Shawna Girgis, Mayor of the City of Bedford; and Dan Terrell, Mayor of the City of Mitchell, spoke on the importance of rail service to economic development and their plans to preserve rail service in Lawrence County. Mr. McCracken emphasized the railroads' historical role in attracting Lawrence County industry and highlighted the advantages of rail over other modes of transportation. He stressed his organization's belief that rail service from Bedford, at least south to Mitchell, must be preserved in order to support economic growth. Mr. McCracken also stated his organization's willingness to work with CSXT and INRD to retain service.

Mayor Girgis further emphasized the importance of rail service to economic development, while acknowledging the railroads' financial difficulties. She described Bedford's and Mitchell's collaboration to form the White River Port Authority (Port Authority), which is considering purchasing a portion of the Line in order to preserve service between Bedford and Mitchell. Mayor Girgis requested that the Board give the Port Authority more time to proceed with a plan to preserve service.

Mayor Terrell also noted that the loss of railroad service would inhibit economic development. He voiced concerns about the discontinuance process, in particular the lack of early notice to state and local officials. Mayor Terrell explained that more time would allow communities to make plans to preserve rail service and requested that CSXT inform area communities in advance of plans to abandon the track.<sup>7</sup> In addition, David Umpleby, legal counsel for Radius and the Port Authority, testified that these entities are considering an offer of financial assistance in an attempt to preserve rail service between Mitchell and Bedford in Lawrence County.<sup>8</sup>

David Bower, the Mayor of the City of Salem in Washington County, and Andrew Wright, City Attorney for Salem, presented Salem's views regarding the loss of rail service. Mr. Wright noted rail service's role in attracting industry to Salem in the past and stressed the need to avoid abandonment and loss of rail infrastructure in order to preserve the possibility of future service. In addition, Jess Helsel, President of the Washington County Economic Growth Partnership, and Washington County Commissioner John Mishler stressed the importance of rail service to economic development and job creation in Washington County. Jim Dunn, a resident of Washington County, voiced concerns that small communities in the center of this line, like Salem, lack the financial capability to preserve rail service for the future.<sup>9</sup>

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(STB served Mar. 26, 2010). The two proceedings are independent matters and have been addressed separately by the Board.

<sup>7</sup> We strongly encourage CSXT to give advance notice to the communities should it ever decide to seek abandonment authority for the Line.

<sup>8</sup> Mr. Umpleby also submitted written correspondence to the Board on March 5, 2010.

<sup>9</sup> Other comments relating to the petition for discontinuance authority were made by Thomas Cooley, President of Radius; Richard Vonnegut, Indiana Trails Fund; Robert

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On March 12, 2010, CSXT filed a written response to the statements offered at the public meeting. In its response, CSXT again points out that INRD holds trackage rights over the Line and that the Line cannot be abandoned until those rights are discontinued. CSXT adds that it has no current plans for the Line beyond this discontinuance.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds 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.

In reaching our determination here, we have carefully considered the testimony of the numerous officials, business representatives, and individuals who spoke at the public meeting in this matter. While we understand the importance of rail service to the affected communities, the lack of any current traffic on the line, coupled with the significant financial losses that CSXT would incur in the future absent this discontinuance, lead us to conclude that discontinuance authority should be granted. We recognize the local communities' concern that this discontinuance may interfere with economic growth, but we stress that CSXT has not sought abandonment authority here, only discontinuance. CSXT has expressed the hope that sufficient traffic can be developed in the future to warrant a resumption of rail service. Moreover, as CSXT has pointed out, until INRD seeks and obtains authority to discontinue its trackage rights on the Line, CSXT may not remove the track and material from the Line.

Holding more in-depth proceedings under 49 U.S.C. 10903, rather than using the relatively summary provisions of section 10502, is not necessary to carry out the rail transportation policy in this case. We have in fact had extensive proceedings in this case already, including the public meeting in Salem, IN, described above, at which a number of interested persons spoke and a supplemental filing by CSXT. Continuing to consider the matter under the exemption procedures, rather than requiring a new proceeding to be instituted under section 10903, minimizes the administrative expense of the regulatory review process, thereby reducing regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption also fosters sound economic conditions and encourages efficient management by more quickly relieving CSXT of the costs of

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Armstrong, Vice President of Bluespring Caverns Operating Company; Judy Gray, Partnership Executive Director of Orange County Economic Development; Spencer Wendelin, Transmark Associates; Cathy Hale, City of Madison Port Authority and CEO for Madison Railroad; Rhonda Greene, Farm Bureau; John C. Hockersmith, a former congressional candidate; and Becky Durbin, a local resident.

maintaining and operating a money-losing line [49 U.S.C. 10101(5) and (9)]. Finally, other aspects of the rail transportation policy will not be affected adversely by our use of this process.

We also find that regulation is not necessary to protect shippers from the abuse of market power.<sup>10</sup> No shippers are currently using the Line and, therefore, discontinuance will not result in the loss of service to shippers. The only shipper located on the Line, Thorn, has been using alternative modes of transportation. Nevertheless, to ensure that Thorn is informed of our action, we will require CSXT to serve a copy of this decision on Thorn within 5 days of the service date of this decision and contemporaneously certify to the Board that it has done so.

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 employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

Because this is a discontinuance proceeding and not an abandonment, the Board will not consider OFAs to acquire the Line for continued rail service, trail use requests, or requests to negotiate for public use of the Line. The Board will consider offers for a subsidy to provide continued rail service under 49 U.S.C. 10904; any such offers must be filed by April 19, 2010. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by CSXT of its operations over 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).

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

3. An OFA under 49 CFR 1152.27(b) to subsidize continued rail service must be received by the railroad and the Board by April 19, 2010, 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 \$1,500 filing fee. See 49 CFR 1002.2(f)(25).

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<sup>10</sup> Given our finding regarding market power, we need not determine whether the proposed discontinuance is limited in scope.

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. Petitions to stay must be filed by April 22, 2010. Petitions to reopen must be filed by May 3, 2010.

6. Provided no OFA to subsidize rail service has been received, this exemption will be effective on May 7, 2010.

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