

32666
EB

SERVICE DATE - JULY 17, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 615X)

CSX TRANSPORTATION, INC.–DISCONTINUANCE EXEMPTION–(BETWEEN EAST OF
MEMPHIS AND CORDOVA) IN SHELBY COUNTY, TN

Decided: July 15, 2002

By petition filed on March 29, 2002,¹ 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 discontinue service over 12.24 miles of its Midwest Region, Nashville Division, Memphis Terminal extending between milepost ONI 222.9, east of Memphis, and milepost ONI 210.66, near Cordova, at the end of the line, in Shelby County, TN.² We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

There are three customers on the line: Jimmy Whittington Lumber Company (Whittington Lumber), Edmonds Material, Inc. (Edmonds), and Memphis Light Gas and Water (Memphis Light).³ According to CSXT, traffic has declined from 455 cars in 1999, to 274 cars in 2000, and 11 cars for the first 2 months of 2001.⁴ CSXT claims that it is not economical to continue to operate the line and

¹ Notice was served and published in the Federal Register on April 18, 2002 (67 FR 19315).

² CSXT previously filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon 13.34 miles of rail line, extending from milepost ONI 224.00 near Memphis, to milepost ONI 210.66 near Cordova. We denied the petition in CSX Transportation, Inc.–Abandonment Exemption–(Between Memphis and Cordova) in Shelby County, TN, STB Docket No. AB-55 (Sub-No. 590X) (STB served Dec. 12, 2001), without prejudice to CSXT's refiling an appropriate application or a petition for exemption. CSXT filed this petition to discontinue service over a major portion of the line, excluding a 1.10-mile segment.

³ Apparently, the proposed discontinuance will not affect the traffic of Bolen Brunsen Bell, a shipper that opposed CSXT's previous abandonment petition involving this line.

⁴ There has been no traffic on the line since March 1, 2001, when the line was embargoed.

that traffic on the line does not cover the cost of operation. CSXT provides the following revenue and cost data in support of its assertion:

	Base Year (calendar year 2000)	Forecast Year (year beginning 3/1/02 using year 2000 traffic)	Subsidy Year
Revenues Attributable	\$244,655	\$259,202	\$ 264,051
Avoidable Costs	\$291,123	\$335,071	\$ 336,738
Subsidization Costs	-	-	\$ 881,000
Return on Value	-	\$110,011	\$ 110,011
Avoidable Loss	\$ 46,468	\$ 75,869	\$ 72,687
Avoidable Loss and Opportunity Costs	-	\$185,880	-
Subsidy Year Loss	-	-	\$1,063,700

CSXT states that operations on the line are complicated because, after leaving its Leewood Yard, the train must enter a portion of the jointly owned CSXT-Canadian National Illinois Central double-track main line that handles about 40 trains per day. The train serving the line must wait until the track is clear. A reverse move back is also necessary, resulting in an additional delay. CSXT states that service to Edmonds and Whittington Lumber, which is made by a three-person crew once a week, usually takes from 6 to 8 hours.

In order to serve its three customers, CSXT states that it must operate over six bridges on the line, all of which are in need of substantial repair. In January 2001, the bridges were inspected by a CSXT engineer, who determined that the first bridge was unsafe to operate over without significant repairs⁵ and that the other five bridges were greatly deteriorated and would require extensive repairs in the near future and replacement within 5 years. CSXT submits the following table of estimated costs to repair and rebuild each bridge.

⁵ CSXT embargoed the line because of the condition of the first bridge and the bridge at milepost ONI 223.3, which is not included in this request for discontinuance exemption.

Bridge Number	Milepost	Repair Cost	Rebuild Cost
1	218.5	\$485,000	\$4,446,000
2	218.4	38,000	540,000
3	218.3	115,000	756,000
4	218.1	45,000	576,000
5	214.9	108,000	216,000
6	211.0	90,000	147,000
Total		\$881,000	\$6,681,000

According to CSXT, it has made available to all of its customers on the line the transload facility at Leewood Yard, which is less expensive to operate than the line and should result in more efficient service to its customers. CSXT also states that all the customers are located on local highways and that they have made extensive use of truck service during the embargo.⁶

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations 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 costs of maintaining and operating an unprofitable line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

⁶ Interstate Highways 40 and 240 almost bisect the line and are readily accessible. In addition, Interstate 40 is nearly parallel to the entire length of the line.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because the customers on the line have not objected to the proposed discontinuance of service and they appear to have adequate transportation alternatives available. Nevertheless, to ensure that the shippers are informed of our action, we will require CSXT to serve a copy of this decision on them within 5 days of the service date and certify to us that they have done so. 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 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 agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on May 28, 2002, requesting comments by June 27, 2002, and recommending that no environmental conditions be imposed on any decision granting discontinuance authority. No comments to the EA were filed. SEA concluded that, based on the information provided from all sources, the proposal, if implemented, will not significantly affect the quality of the human environment. Based on SEA's recommendation, which we adopt, we conclude that the proposed discontinuance of service will not significantly affect either the quality of the human environment or the conservation of energy resources.

Because this is a discontinuance proceeding and not an abandonment, we need not consider offers of financial assistance (OFA) to acquire the line for continued rail service, trail use requests, or requests to negotiate for public use of the line. However, OFAs to subsidize continued rail operations do apply to discontinuances and may be filed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by CSXT of its operations as described above, subject to the employee protective conditions 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 the shippers on the line within 5 days after the service date of this decision and to certify to us that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by July 26, 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 a \$1,100 filing fee. See 49 CFR 1002.2(f)(25).

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 August 1, 2002. Petitions to reopen must be filed by August 12, 2002.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on August 16, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary