

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 622X)

CSX TRANSPORTATION, INC. — ABANDONMENT EXEMPTION —
IN PIKE COUNTY, OH

Decided: May 5, 2003

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon an approximately 4.14-mile line of railroad known as the Teays Industrial Track between milepost CES-0.0 and milepost CES-4.14 in Pike County, OH (the line). Notice of the exemption was served and published in the Federal Register on April 4, 2003 (68 FR 16596). The exemption is scheduled to become effective on May 6, 2003. Petitions to stay the exemption were due on April 14, 2003, and petitions to reopen were due April 24, 2003.

In a letter filed on March 31, 2003,¹ the Ohio Rail Development Commission (ORDC) requests that the Board give proper consideration to the long term economic and national defense impacts of the abandonment. ORDC asserts that the United States Energy Corporation (USEC), a private uranium plant located between the line and a line of Norfolk Southern Railway Company (NSR), is investing \$50 million in its “Lead Cascade” project.² That project, according to ORDC, could be a precursor to a future \$1 billion commercial uranium plant project that could increase traffic on the line. Also, in a letter filed on April 11, 2003, The National Association of Reversionary Property Owners (NARPO), on behalf of abutting property owners with reversionary interests in the right-of-way, requests that the Board declare that the line is industrial track under 49 U.S.C. 10906 and, accordingly, that the Board has no jurisdiction to decide the abandonment.³ On April 30, 2003, CSXT filed a reply to NARPO’s request. We will deny both ORDC’s and NARPO’s requests.

¹ Because this letter was filed after the abandonment exemption was decided but before the notice was served, we will treat this letter as a request to reopen and reconsider.

² The uranium plant was at one time owned and operated by the United States Government.

³ Although, NARPO does not specifically request reconsideration of the notice, we will consider its request as such.

DISCUSSION AND CONCLUSIONS

ORDC's comments do not necessitate reopening this proceeding. Any new traffic that might materialize on the line is merely speculative at this time. Furthermore, the Military Traffic Management Command was served with notice of the proposed abandonment and has not filed any documents with the Board stating that abandonment of the line would affect the national defense.

With regard to NARPO's letter, it also has not shown that reopening this proceeding is warranted. NARPO simply states that the rail line is industrial track and, accordingly, is exempt from Board review under 49 U.S.C. 10906.

Under 49 U.S.C. 10906, our jurisdiction does not extend to the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks. Although the track sought to be abandoned has been commonly referred to as the Teays Industrial Track, it is the use, not the name, that determines whether a particular stretch of track is within the scope of 49 U.S.C. 10906. In view of the evidence provided by CSXT in its notice of exemption, under the criteria for spur, industrial, team, switching, or side track,⁴ the line does not appear to be industrial track. The line is of a significant length, is owned and maintained by the railroad, and historically served more than one shipper.⁵ We conclude that there is no basis for reopening. Accordingly, the requests will be denied.

This action will not significantly affect either the quality of the human environment or the

⁴ While there is no single test of what constitutes an exempt track under section 10906, we consider the following criteria: the track's history, past use, and physical characteristics, taking into account such factors as the length of the track, whether it serves more than one shipper, whether it is sub-ended, whether it was built to invade the territory of another railroad, whether the shipper is located at the end of the track, whether there is regularly scheduled service, the volume of traffic moving over the track, who owns and maintains the track, whether the track was constructed with light weight rail, the condition of the track, whether the track was used only for loading, unloading, or switching, and whether stations are located on the track. See CNW— Aban. Exempt. — In McHenry County, IL, 3 I.C.C.2d 366 (1987), rev'd on other grounds sub nom. Illinois Commerce Com'n v. ICC, 879 F.2d 917 (D.C. Cir. 1989); Battaglia Distributing Co., Inc. v. Burlington Northern Railroad Company, Finance Docket No. 32058 (STB served June 27, 1997); and Chicago SouthShore & South Bend Railroad — Petition for Declaratory Order — Status of Track at Hammond, IN, STB Finance Docket No. 33522 (STB served Dec. 17, 1998).

⁵ According to ORDC, the uranium plant site was selected because of its proximity to the rail line.

conservation of energy resources.

It is ordered:

1. NARPO's and ORDC's requests are denied.
2. This decision is effective on its service date.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary