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SERVICE DATE - OCTOBER 9, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 592X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN CLARK  
COUNTY, IN

Decided: October 5, 2001

By petition filed on June 21, 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 segment of its Midwest Region railroad line, known as the Louisville Division, Louisville Terminal/Hoosier Subdivision, extending between milepost B-1.3, near Watson, and milepost B-6.7, near Jeffersonville, a distance of 5.4 miles, in Clark County, IN. The City of Jeffersonville (City) requests a public use condition and issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). We will grant the exemption, subject to trail use, public use, environmental, and standard employee protective conditions.

BACKGROUND

CSXT states that the portion of the line proposed for abandonment presently has two active shippers, PQ Corp. and CSX Transflo. Should the abandonment occur, CSXT confirms that both shippers will remain its customers, and will continue to be served through a reciprocal switching arrangement with Louisville & Indiana Railroad (LIRC). This arrangement will open the CSX Transflo facility to joint service by CSXT and LIRC. PQ Corp. is already served by both carriers. According to CSXT, PQ Corp. and CSX Transflo have been notified of CSXT's intent to abandon the line and have been served with a copy of the petition. Neither shipper has indicated opposition to the abandonment.

CSX further states that abandonment of this line segment will improve highway safety in Clark County because 18 at-grade highway crossings will be eliminated.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on July 11, 2001 (66 FR 36363-64).

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 cost of owning and maintaining the line segment and by allowing CSXT to use 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 CSXT will continue to provide service to PQ Corp. and CSX Transflo. Nevertheless, to ensure that PQ Corp. and CSX Transflo are informed of our action, we will require CSXT to serve a copy of this decision and notice on the shippers within 5 days of the service date of this decision and notice and 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.

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 government 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 effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on August 20, 2001, and requested comments by September 18, 2001.

In the EA, SEA recommends that four environmental conditions be imposed on the abandonment in response to the concerns of the Bloomington Field Office of the U.S. Fish and Wildlife Service. The conditions would require that any salvage operations undertaken by CSXT shall be done in a manner that: (1) minimizes tree clearing and avoids wetland disturbance while accessing work areas; (2) avoids discharge of demolition debris, waste material, or other pollutants into Mill Creek or the wetlands; (3) contains soil disturbed by earthmoving to prevent runoff into waterways or wetlands; and (4) avoids work in the stream channel during the primary fish spawning season of April 1 to June 15, if the bridge at Mill Creek is removed. No comments were received in response to the EA.

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

As noted, the City requests interim trail use. It has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. In a letter filed on July 30, 2001, CSXT states that it is willing to enter into negotiations with the City. Because the City's request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to negotiate, we will issue a NITU. 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, subject to the conditions imposed below. 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 its EA that the right-of-way may be suitable for other public use following abandonment. The City also requests that a 180-day public use condition be imposed, precluding CSXT from: (1) disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels. It states that the subject rail corridor would be preserved for future trails or walking paths, and would be a logical extension to an existing regional trail system. It also states that the structures have considerable value for the corridor's intended public use. The City seeks a 180-day period because of the need to negotiate with CSXT.

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 City has 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, 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 persons to acquire a 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 City but may engage in negotiations with other interested persons.

The parties should note that the 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, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1) for purchase or subsidy of the line, 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, trail use 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 rail line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), the terms and conditions for implementing interim trail use/rail banking set forth below, the condition that CSXT shall 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 from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use, and the conditions that, in the event CSXT undertakes a salvage operation, it shall do so in a manner that: (1) minimizes tree clearing and avoids wetland disturbance while accessing work areas; (2) avoids discharge of demolition debris, waste material, or other pollutants into Mill Creek or the wetlands; (3) contains soil disturbed by earthmoving to prevent runoff into waterways or wetlands; and (4) avoids work in the stream channel during the primary fish spawning season of April 1 to June 15, if the bridge at Mill Creek is removed.
2. CSXT is directed to serve a copy of this decision and notice on PQ Corp. and CSX Transflo within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.
3. If an interim trail use 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 to 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 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 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 abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1)<sup>2</sup> to allow rail service to continue must be received by the railroad and the Board by October 19, 2001, 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 is currently set at \$1,000. 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 on November 8, 2001. Petitions to stay must be filed by October 24, 2001, and petitions to reopen must be filed by November 5, 2001.

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 October 9, 2002, 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 not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary

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<sup>2</sup> See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997).