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SERVICE DATE - SEPTEMBER 17, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 4X)¹

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—
IN VERMILLION AND WARREN COUNTIES, IN

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE/

Decided: September 16, 2002

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively, applicants) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 6.12 miles of railroad between milepost QSO-5.18 near the Illinois/Indiana State line and milepost QSO-11.30 near Olin, in Vermillion and Warren Counties, IN. Notice of the exemption was served and published in the Federal Register on September 28, 2001 (66 FR 49741-42). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on October 30, 2001, but on October 11, 2001, Flex-N-Gate Corporation (Flex) late-filed a notice of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) to purchase the entire line.²

¹ The notice of exemption served September 28, 2001, embraced STB Docket No. AB-55 (Sub-No. 597X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Vermillion and Warren Counties, IN.

² On October 15, 2001, applicants filed a request for a 60-day extension, in accordance with 49 CFR 1152.27(c)(2)(ii)(D), to develop and submit the required information requested by Flex. By decision served October 29, 2001, the proceeding was reopened, the exemption was made subject to several environmental conditions, and Flex's late-filed notice of intent was accepted, and the due date for Flex to file its OFA was established as December 28, 2001, and the effective date was further postponed to January 7, 2002. On December 18, 2001, Flex filed a petition to toll the 30-day period for submitting its OFA until January 28, 2002. By decision served December 21, 2001, the time period for Flex to file its OFA was extended until January 28, 2002, and the effective date of the exemption was extended until February 7, 2002.

By decision served January 31, 2002, Flex was found financially responsible and the effective date of the exemption authorizing the abandonment was postponed in order to permit the OFA process to proceed. The January 31 decision also set February 27, 2002, as the deadline for either party to request the Board to establish the terms and conditions for the purchase price if CSXT and Flex could not agree on the purchase price. The deadline for filing requests for the establishment of terms and conditions was extended through September 4, 2002, by decisions served February 26, 2002, March 22, 2002, April 26, 2002, June 10, 2002, June 28, 2002, and August 23, 2002.³

By facsimile received on September 4, 2002, and served on CSXT, Flex states that the parties have reached an agreement for Flex to purchase approximately 5.91 miles of the right-of-way from NYC between milepost QSO-5.18 and milepost QSO-11.09.

When a carrier and a person offering to purchase a line enter into an agreement for continued rail service, the Board is required to approve the transaction and dismiss the abandonment exemption. See 49 U.S.C. 10904 and 49 CFR 1152.27(f)(2). Accordingly, the sale will be approved and the abandonment exemption will be dismissed.

This decision does 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. 10904, Flex is authorized to acquire the rail line between milepost QSO-5.18 and milepost QSO-11.09.
2. Under 49 U.S.C. 10904 and CFR 1152.27(f)(2), the abandonment exemption is dismissed, effective on the date the sale is consummated.⁴

³ On May 14, 2002, CSXT filed a letter stating that one ending milepost was erroneously identified in the verified notice, and that the proposed abandonment and discontinuance is actually between milepost QSO-5.18 and QSO-11.09, rather than between milepost QSO-5.18 and milepost QSO-11.30 as previously indicated. In the decision served June 10, 2002, the exemption was modified to delete the portion of the right-of-way between mileposts QSO-11.09 and QSO-11.30 from the abandonment and discontinuance authorizations and from the financial assistance process.

⁴ The October 29 decision also imposed several environmental conditions and provided that the requests for issuance of a notice of interim trail use under the National Trail System Act, 16 U.S.C. 1247(d), and for a public use condition under 49 U.S.C. 10905, would be held in abeyance pending

(continued...)

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

⁴(...continued)
completion of the OFA process. Because the abandonment exemption is being dismissed, those requests are moot.