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SERVICE DATE - JANUARY 31, 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: January 30, 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 QS0-11.30 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).

The exemption was scheduled to become effective on October 30, 2001, but on October 11, 2001, Flex—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. 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, 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, 2002.² 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.

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 In the October 29, 2001 decision, the exemption was made subject to several environmental conditions and the requests for issuance of a notice of interim trail use and a public use condition were held in abeyance pending completion of the OFA process.

On January 28, 2002, Flex timely filed an OFA to purchase the entire line for \$144,851, which Flex states is the price established in an oral agreement reached by the parties (Flex, NYC, and CSXT).

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981).

Flex states that it owns and operates several manufacturing plants in Indiana, Illinois, Michigan, and Windsor, Ontario, and owns a warehouse facility that is located at the end of the rail line that it is acquiring. Flex states that it has a credit line in excess of \$100,000,000. Flex submitted a letter from LaSalle Bank N.A., in Chicago, IL, indicating that Flex has the financial resources to purchase the line and operate it for at least 2 years. Based on the information provided, Flex is financially responsible.

Because Flex, a financially responsible entity, has offered financial assistance, the effective date of the exemption authorizing the abandonment will be postponed.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$15,600. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of the proceeding, along with the words "Attention: Case Control/Recordation Unit, Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the decision authorizing abandonment of the line is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If NYC and Flex cannot agree on a purchase price of the line, either party may request the Board to establish the terms and conditions of the purchase price on or before February 27, 2002. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary