

SERVICE DATE - JULY 17, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 609X)

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

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 abandon a line of railroad in its Midwest Region, Louisville Division, Toledo Subdivision, extending between the junction of the Vandalia Line and the Toledo Main Line at or about milepost BE 69.5 to the end of the Vandalia Line track, a distance of approximately 2.59 miles, in Vandalia, Montgomery County, OH. We will grant the exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

CSXT states that, because the line proposed for abandonment requires immediate tie replacement and crossing rehabilitation, continued service on behalf of the line's only active rail shipper, Wolohan Lumber Company (Wolohan),² located at or near the end of the line at Vandalia, would cause CSXT to sustain significant economic losses. According to CSXT, Wolohan's use of the line for inbound lumber shipments has diminished, with 33 carloads in 2000, 47 carloads in 2001, and 2 carloads during the first 3 months in 2002. CSXT states its belief that Wolohan uses truck transportation for its inbound movements. The carrier also states that it has served a copy of its petition on Wolohan and that this shipper has not indicated any opposition to the abandonment.

¹ Notice of the filing was served and published in the Federal Register on April 18, 2002 (67 FR 19315-16).

² CSXT indicates that a CSX Transflo facility and a General Motors Corporation (GMC) plant at Vandalia used the rail line in the past, but these shippers respectively have relocated or converted to a non-rail facility. The carrier states that CSX Transflo does not oppose the abandonment and that GMC supports its petition.

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 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 here. 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 and by allowing CSXT to use its assets more productively elsewhere on its rail system [49 U.S.C. 10101(4), (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. Wolohan, the only active shipper remaining on the rail line, has decreased its rail use and, after being informed of CSXT's request, has not opposed the abandonment. Nevertheless, to ensure that this shipper is informed of our action, we will require CSXT to serve a copy of this decision on Wolohan within 5 days of the service date of this decision 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 May 28, 2002, and requested comments by June 26, 2002.³

³ No comments were received in response to the EA.

In the EA, SEA recommends that, in response to the concerns of the Reynoldsburg Field Office of the U.S. Fish and Wildlife Service and the U.S. National Geodetic Survey (NGS), two conditions be imposed on the abandonment. The first recommended condition would require CSXT to: save trees exhibiting characteristics of Indiana bat habitat wherever possible; if the trees must be cut, avoid cutting them between April 15 and September 15; and, if the time restriction is unacceptable, conduct a survey with the endangered species coordinator at the Reynoldsburg Field Office of the U.S. Fish and Wildlife Service to determine if bats are present. SEA's second recommended condition would require CSXT to notify NGS at least 90 days prior to any salvage activities that may disturb or destroy a geodetic station marker, so that plans can be made for relocation of the marker.

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 conditions, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA indicates that, following the abandonment/discontinuance, the ROW may be suitable for other public use under 49 U.S.C. 10905. We note, however, that no one has sought a public use condition, and none will be imposed.

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), and the conditions that CSXT shall: (1) save trees exhibiting characteristics of Indiana bat habitat wherever possible; if the trees must be cut, avoid cutting them between April 15 and September 15; and, if the time restriction is unacceptable, conduct a survey with the endangered species coordinator at the Reynoldsburg Field Office of the U.S. Fish and Wildlife Service to determine if bats are present; and (2) notify the U.S. National Geodetic Survey at least 90 days prior to any salvage activities that may disturb or destroy a geodetic station marker, so that plans can be made for relocation of the marker.

2. CSXT is directed to serve a copy of this decision on Wolohan Lumber Company within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)⁴ to allow rail service to continue must be received by the railroad and the Board by July 26, 2002, subject to time extensions

⁴ 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).

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 \$1,100. 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. Provided no OFA has been received, this exemption will be effective on August 16, 2002. Petitions to stay must be filed by August 1, 2002, and petitions to reopen must be filed by August 12, 2002.

6. 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 July 17, 2003, 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 and Vice Chairman Burkes.

Vernon A. Williams
Secretary