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SERVICE DATE – LATE RELEASE OCTOBER 25, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 670X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN
MIDDLESEX COUNTY, MA

Decided: October 17, 2006

By petition filed on July 7, 2006, 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 2.39-mile line known as the Saxonville Industrial Track. The track runs between QBX 0.15 and the end of the line at milepost QBX 2.54, in the Northern Region, Albany Division, Boston Subdivision, in Middlesex County, MA. Notice of the filing was served and published in the Federal Register on July 27, 2006 (71 FR 42719). A request for issuance of a notice of interim trail use (NITU) and for imposition of a public use condition was filed on August 15, 2006, by the Town of Natick, MA (Town). CSXT filed a reply to the Town's request on September 8, 2006. We will grant the petition for exemption, subject to trail use, public use, environmental, and standard employee protective conditions.

BACKGROUND

Since 2003, there has been only one shipper on the line, Metro Freezer & Storage, LLC (Metro Freezer). The traffic carried on the line consisted of 103 carloads in 2003, 80 carloads in 2004, and 86 carloads in 2005. CSXT has used 2005 as its base year and shows that traffic for that year generated \$156,934 in revenues and \$231,510 in total avoidable costs, resulting in an avoidable loss from operations of \$74,576.

In 2005, Metro Freezer relocated its facility, and the line has carried no traffic in 2006. Although CSXT notes that Metro Freezer has expressed some interest in trucking shipments to the line, CSXT states that it has not been advised of any opposition to the proposed abandonment. CSXT does not believe the line will attract any traffic in the future. The carrier explains that it is difficult to provide service to and from the Saxonville Industrial Track because the main line from which it extends is heavily used for freight and passenger traffic.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned 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. 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 also will foster sound economic conditions and encourage efficient management by relieving CSXT from the expense of maintaining and operating a line that continues to operate at a loss and by allowing the carrier to apply 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 adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Metro Freezer has relocated its facility off of the line and has not objected to the proposal. Nevertheless, to ensure that the shipper is informed of our action, we will require CSXT to serve a copy of this decision and notice on Metro Freezer within 5 days of the service date of this decision and notice and to certify to the Board that it has done so. Given our market power finding, we need not determine whether the proposed abandonment 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 and historic report with its petition and has notified the appropriate Federal, state, and local 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 the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on September 5, 2006, requesting comments by October 5, 2006.

In the EA, SEA states that CSXT intends to salvage rail, ties, and track materials from the line. SEA notes that CSXT has suggested procedures for salvaging the line. As explained in the EA, CSXT proposes that salvage be performed within the right-of-way, and that material be removed using existing public and private crossings. CSXT further states that no new access roads are contemplated. Crossties and other debris would be

transported away from the line and would not be discarded along the right-of-way, in streams or wetlands, or along the banks of waterways. CSXT does not intend to disturb any of the underlying roadbed or perform any activities that would cause sedimentation or erosion of the soil. In addition, SEA notes that CSXT does not anticipate any dredging or use of fill in the removal of the track material. CSXT states that it would take precautions during salvage operations to prevent or control spills from fuels, lubricants, or other pollutant materials from entering any waterways. Accordingly, SEA recommends that a condition be imposed requiring CSXT to conduct salvage activities as proposed by the railroad.

No comments to the EA were filed by the October 5, 2006 deadline. The environmental condition recommended by SEA in the EA will be imposed. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

The Town submitted a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for imposition of a public use condition under 49 U.S.C. 10905. It has also submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way would be subject to possible future reconstruction and reactivation of the right-of-way for rail service, as required under 49 CFR 1152.29. By letter filed September 8, 2006, CSXT states that it is not opposed to negotiating for a trail condition. Because the Town's request complies with the requirements of 49 CFR 1152.29, and CSXT is willing to enter into trail use negotiations, we will issue a NITU for the subject line. 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 (and if the line is not purchased or subsidized pursuant to an offer of financial assistance (OFA)), CSXT may fully abandon the line, subject to the condition 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 indicated in the EA that, following abandonment and salvage of the line, the right-of-way may be suitable for other public use. The Town also requests imposition of a 180-day public use condition. It states that the corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. The Town further explains that the corridor provides an important wildlife habitat, and that preserving it as a trail is consistent with that end. The Town states that it needs a condition lasting 180 days to accommodate local property law and engage in due diligence.

Persons who request a Trails Act condition may also request a public use condition 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 both conditions are appropriate, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The Town 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, commencing from the effective date of this decision and notice, will be imposed covering the entire rail line to be abandoned to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. 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 person to negotiate to acquire the 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 Town, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the OFA process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, OFAs 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), 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, the trail use and public use processes may proceed.

This action will 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. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described 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) leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (except track, ties, and signal equipment) for a period of 180 days from the effective date of this decision and notice, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; (2) comply with the terms and conditions for implementing interim trail use/rail banking, as set forth below; and (3) when salvaging the line: (a) perform salvage activities within the right-of-way and utilize existing public and private crossings; (b) transport crossties and other debris away from the right-of-way, streams, wetlands, and banks of waterways; (c) avoid disturbing the underlying roadbed and any activities that would cause sedimentation or erosion of the soil; (d) avoid dredging or use of fill in the removal of the track material; and (e) take precautions

during salvage operations to prevent or control spills from fuels, lubricants or any other pollutant materials from entering any waterways.

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

3. If an interim trail use/rail banking 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 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/rail banking 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/rail banking is reached by May 23, 2007, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 6, 2006, 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 \$1,300. 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 24, 2006. Petitions to stay must be filed by November 9, 2006, and petitions to reopen must be filed by November 20, 2006.

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 25, 2007, 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 no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, Commissioner
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Vernon A. Williams
Secretary