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SERVICE DATE – DECEMBER 18, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 745X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN FLOYD
COUNTY, KY

Digest:¹ The Board denies a request to reopen and reconsider an exemption permitting CSX Transportation, Inc., to abandon approximately 11.4 miles of railroad line in Floyd County, Ky.

Decided: December 16, 2015

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 11.4 miles of railroad line between milepost COQ 0.0 near Prestonsburg and milepost 10.1 near David, in Floyd County, Ky. (the Line). Notice of the exemption was served and published in the Federal Register on November 2, 2015 (80 Fed. Reg. 67,489).

On November 12, 2015, Floyd County Judge/Executive Benjamin L. Hale (Floyd County) submitted to the Board a copy of a letter addressed to CSXT regarding this proceeding, and on November 16, 2015, Floyd County submitted a substantially identical letter addressed to the Board, requesting reconsideration and postponement of the proposed abandonment. On November 17, 2015, CSXT replied, construing the Floyd County letter as a petition to stay and reconsider the abandonment exemption.

On December 1, 2015, the Director of the Office of Proceedings issued a decision reopening the proceeding and imposing environmental, trail use, and historic preservation conditions on CSXT's exemption. See CSX Transp., Inc.—Aban. Exemption—in Floyd Cty., Ky., AB 55 (Sub-No. 745X) (STB served Dec. 1, 2015). That decision indicated that the Board would address Floyd County's request for reconsideration in a subsequent decision and that, in the meantime, the Section 106 historic preservation condition prevents CSXT from undertaking any salvage, exercising its abandonment authority, or filing its notice of consummation until the

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Section 106 process is complete and the Board has issued a decision removing the condition. We now consider Floyd County's request for reconsideration.

DISCUSSION AND CONCLUSIONS

The Board has treated requests similar to Floyd County's letter as petitions to reopen the proceeding. See Red River Valley & W. R.R.—Aban. Exemption—in Dickey Cty., N.D., & Brown Cty., S.D., AB 391 (Sub-No. 8X) (STB served Oct. 5, 2001) (Entire Board decision). A petition to reopen a Board action must state in detail the respects in which the petitioner alleges the proceeding involves material error, new evidence, or substantially changed circumstances. 49 U.S.C. § 722(c); 49 C.F.R. § 1115.4. The alleged grounds must be sufficient to convince the Board that they would lead it to materially alter its prior action. Canadian Nat'l Ry.—Control—EJ&E W. Co., FD 35087 (Sub-No. 8), slip op. at 8 (STB served Nov. 8, 2012).²

Floyd County seeks reconsideration of CSXT's abandonment exemption based on "current economic development efforts" that are underway in the region. Floyd County states that the property along the Prestonsburg to David rail corridor lends itself to economic development and would be enhanced by rail access and that the County is in discussions involving "the potential use of such a needed asset."

In response, CSXT contends that Floyd County has not met the criteria for reconsideration. (CSXT Reply 4.) CSXT argues that Floyd County does not question the use of the notice of exemption process by CSXT nor does it question the accuracy of the notice of exemption published by the Director. (*Id.*) CSXT also asserts that Floyd County does not provide any information concerning the type of business that might develop along the Line, the potential volume of traffic on the Line, or even how long the potential economic developments would take. (*Id.*)

Given the circumstances presented here, the Board concludes that Floyd County has not met the reopening standard. As noted by CSXT, Floyd County does not allege that CSXT's verified notice of exemption was inaccurate or that there was error in the Board's publication of the November 2 notice. Thus, Floyd County does not appear to allege material error in authorizing the abandonment exemption. Additionally, Floyd County has not demonstrated that the proceeding should be reopened based on changed circumstances or new evidence. While Floyd County alludes to the potential development of the rail corridor and the need for direct rail access in the region, it provides no specific information about future traffic on the Line. General assertions about the need to retain a rail line to attract future economic development are too

² Pursuant to 49 C.F.R. § 1152.50(d)(3), if the notice of exemption "contains false or misleading information, the use of the exemption is void ab initio and the Board shall summarily reject the exemption notice." Here, Floyd County does not allege that CSXT's notice was false or misleading and thus, we will not treat its letter as a petition to reject the notice of exemption.

speculative a basis for preventing a rail carrier from abandoning an unproductive line.³ CSXT has certified in its verified notice of exemption that freight traffic has not moved over the Line for over two years. Floyd County gives no indication that any agreements that would result in future requests for rail service are imminent or even reasonably foreseeable, and circumstances like these do not justify postponing or denying CSXT's abandonment exemption. And although the offer of financial assistance process under 49 U.S.C. § 10904 permits financially responsible persons to offer to acquire lines authorized for abandonment, Floyd County did not use that process in this case.⁴

In sum, the record before us does not allege material error, nor does it show that the economic development efforts referred to by Floyd County amount to new evidence or substantially changed circumstances that would warrant postponing or denying CSXT's abandonment exemption.

It is ordered:

1. Floyd County's petition to reopen is denied.
2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.

³ See, e.g., Mid-Mich. R.R.—Aban. Exemption—in Kent, Ionia, & Montcalm Ctys., Mich., AB 364 (Sub-No 14X), slip op. at 4 (STB served Sept. 26, 2008) (“[S]peculation about future traffic is not a sufficient basis upon which to deny or revoke an abandonment authorization”); CSX Transp., Inc.—Aban.—Between Bloomingdale & Montezuma, in Parke Cty., Ind., AB 55 (Sub-No. 486) et al., slip op. at 9-10 (STB served Sept. 13, 2002), aff'd in pertinent part sub nom., Montezuma Grain Co. v. STB, 339 F.3d 535, 541 (7th Cir. 2003); CSX Transp., Inc. v. STB, 96 F.3d 1528, 1531-32 (D.C. Cir. 1996).

⁴ As noted above, in the December 1, 2015 decision, the Board imposed a notice of interim trail use or abandonment (NITU) pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, providing time for the City of Prestonsburg, Ky., and CSXT to negotiate an interim trail use/rail banking agreement. If an interim trail use agreement is reached (and thus, interim trail use is established), use of the right-of-way for trail purposes would be subject to possible future reconstruction and reactivation of the right-of-way for rail service.