

SERVICE DATE - DECEMBER 17, 1996

SURFACE TRANSPORTATION BOARD¹

DECISION

Docket No. AB-55 (Sub-No. 519X)

CSX TRANSPORTATION, INC.
--ABANDONMENT EXEMPTION--
IN ORANGE COUNTY, FL

Decided: November 22, 1996

BACKGROUND

On December 18, 1995, CSX Transportation, Inc. (CSXT or petitioner) filed a petition seeking an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon a 0.69-mile line of railroad between Highland Street (milepost ST-815.88 at the point of switch of the branch main line) and Virginia Avenue (milepost ST-816.57 at the end of track) in Orlando, Orange County, FL. Central Florida Lumber and Supply Company, d/b/a Mills & Nebraska Company (Central Florida), Industrial Equipment and Engineering Company (IEEC), and Seacoast Supply Company (SSC) filed in opposition to the petition. By decision served May 24, 1996, the Board directed CSXT and the protesting shippers to submit supplemental information in response to a series of specific questions to enable the Board to evaluate the merits of this abandonment exemption proposal.

On June 12 and June 13, 1996, CSXT and the three shippers submitted their respective supplemental filings. On July 3, 1996, the shippers submitted a reply to CSXT's filing. On July 8, 1996, CSXT submitted a response to the shippers' filing.

The railroad's attempt to abandon this short stretch of track is vigorously contested by the three shippers, one with a facility located on the track to be abandoned and two others that use the facility. The shipper located on the line, Central Florida, has put its plant up for sale.

In deciding whether to authorize an abandonment, we look to see if the line proposed to be abandoned is a burden on interstate commerce--whether the revenues earned by service on the line fail to cover the cost of providing that service. CSXT

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

claims that it is losing \$33,611 per year from operations on the line. CSXT computes its annual revenues from the line as \$116,635. The railroad considers its costs attributable to earning that revenue to be \$150,246, including an annual maintenance figure of \$52,000.

But, as the record makes clear, this is not the cost of maintaining the line. Rather, it is CSXT's estimate of the cost of rehabilitating the line. Under the Board's accounting rules, rehabilitation, unlike maintenance, may not be used in computing annual costs, because it is not a recurring annual expense.

Deleting the \$52,000 from the costs claimed by CSXT leaves the line showing a profit at \$18,389 per year. Thus, in our May 14, 1996 order, we asked CSXT to address the shippers' contention that the railroad improperly included the rehabilitation figure in calculating its operating loss. We also asked Central Florida if it was planning to move and, if so, when. We asked the other two shippers to discuss the benefits of using Central Florida's facility and the transportation alternatives available to them.

SUPPLEMENTAL INFORMATION

Rehabilitation. CSXT asserts that it was fully justified in including its entire expense of crosstie replacement and crossing repair in its forecast year. According to petitioner, that is the only year it can reasonably expect to recoup its investment, since the sole rail patron on the line intends to relocate. CSXT states that it cannot spread the expense out over future years because, if Central Florida succeeds in selling its plant, the line will not be in operation in future years.

As it did in its prior petition, CSXT includes a verified statement of its roadmaster, J.D. Arthur.² Mr. Arthur states that, except for the installation in 1989 of 150 good crossties³ in two curves (between Highland Street/Ferris Street and between Ferris Street/Virginia Avenue), the remainder of the crossties are completely covered with dirt (photographs submitted). According to Arthur, during a June 6, 1996 inspection of the line, he uncovered two crossties at two locations (between the main line switch and Highland Street), which he found to be old, crumbling, and in need of immediate replacement. Arthur contends that the line has 2,100 crossties; that the line should have 700 good crossties to allow for safe operations; and that (based on the projection that the 150-200 crossties installed in 1989 remain good today) between 500-550 new crossties are thus necessary for safe operations on this line. Finally, the witness asserts that the three crossings at Highland Street, Ferris Street, and Virginia Avenue need to be reworked because of deterioration.

Central Florida argues that CSXT has not justified including a track rehabilitation cost in its forecast year maintenance

² Included with the submittal is a copy of a letter/inspection report from the Florida Department of Transportation.

³ In CSXT's filing of February 13, 1996, Mr. Arthur gave an estimate of 200 good crossties as having been installed.

costs. It asserts that rehabilitation costs are neither appropriately included in maintenance costs in the forecast year, nor properly spread out over future years. Central Florida notes that rehabilitation is a one-time cost.

Central Florida points out that the expert Federal Railroad Administration (FRA) evidence submitted by CSXT shows only four deviations from FRA track safety standards, and that none is for defective crossties or road crossings. Thus, the shipper argues, it is apparent from the inspector's report that there does not exist a need for more than a few thousand dollars in rehabilitation cost. The shipper also contends that CSXT has not shown that continued operation of the line would be an economic burden,⁴ because when rehabilitation cost is eliminated from the forecast year track maintenance costs the line returns a profit.

Shipper Data. In response to our question directed to it, Central Florida says that its property was first listed for sale in 1991 and that the listing continues without any greater prospect of sale today than over the past 5 years. The shipper submits that it has no record of any written offer from the City of Orlando (City) concerning moving expenses nor has it entered into any negotiations with the City.⁵ The shipper adds that it derives significant revenue from providing receiving services to IEEC, SSC, and other patrons that use its rail siding, and that alternative transportation modes are not economically or competitively viable.

In response to our inquiry as to the benefits of using Central Florida's facility, IEEC states that it receives refractory brick at the facility by rail. Central Florida unloads the brick, holds it in its warehouse, and delivers the brick to IEEC's manufacturing facility. IEEC adds that, based on the cost competitiveness of its present arrangement with Central Florida, it has recently consolidated its facilities and will increase its rail carloads by 50 percent, starting with the second half of 1996. IEEC further states that it is contemplating outbound rail shipments in the future from that shipper's facility. IEEC states that it has not developed any transportation alternatives at this time, but it asserts that truck service is not a viable option.

SSC says that Central Florida receives, unloads, and provides temporary storage for carloads of its commodity (sheet rock/gypsum board). SSC points out that, through May 1996, it received 35 carloads at Central Florida's facilities (noting that some shipments were held up due to production problems with its supplier), and adds that it currently has 10 carloads in transit. This shipper avers that it has been unable to locate a team track

⁴ Moreover, in order to remove any possibility of a finding of burden on CSXT in the event rehabilitation costs were found to be substantial, the shipper offers to pay those costs should it relocate off the line before they could be recovered from profits. Because the parties have apparently not discussed this offer with each other, we will not consider it further.

⁵ The shipper submits correspondence regarding negotiations between the staffs of the City's Community Redevelopment Agency and CSXT concerning acquisition of the right-of-way.

or another unloading point with the required warehousing available that is as cost competitive as its arrangement with Central Florida.

Rebuttal. CSXT contends that the shippers' proposal not to replace any crossties at this time is not feasible from a safety standpoint. CSXT admits that, if required to continue operating, the railroad would not have to replace every crosstie to ensure safe operations. But CSXT states that it would be necessary to replace several hundred ties before future derailments begin to occur on a regular basis.

CSXT further states that it does not agree with Central Florida that the inspector's report shows only a minimal cost for repairing the line. CSXT also claims that no attempt was made by the inspector to uncover any crossties to determine their current condition, and that the evidence submitted by Mr. Arthur clearly shows that an immediate crosstie replacement program is necessary.

Finally, CSXT submits that there are other facilities in the Orlando area similar to Central Florida's facility where SSC, IEEC, and other patrons can receive their rail shipments. Petitioner further indicates that it is willing to work with the rail users to find alternative transportation and other suitable facilities.

DISCUSSION AND CONCLUSIONS

In our prior decision, we were unable to determine, on the record before us, whether this abandonment exemption should be granted or denied. Consequently, we asked the parties to file supplemental evidence. The parties, in particular CSXT, have failed to provide sufficient evidence to support a grant of the abandonment authority. Rather than denying the petition outright, however, we will give CSXT one last opportunity to provide adequate support for its petition. We will give the protestants an opportunity to reply.

As indicated in our prior decision, CSXT's justification for abandonment is premised on its asserted need to immediately perform \$52,000 worth of rehabilitation on this line. We must reject this figure. We need not address CSXT's argument that the shipper's attempt to sell its facility justifies allocating all rehabilitation cost to a 1-year period. CSXT is entitled to claim rehabilitation only to the extent needed to bring a line into conformity with FRA Class 1 standards. The record indicates that the line meets FRA Class 1 standards. At best, only a few thousand dollars are needed to correct the four deviations from FRA Class 1 standards noted by CSXT. Because we have rejected CSXT's rehabilitation figure, we find the line to be profitable on the present record.⁶

⁶ Although CSXT did not actually provide any maintenance figure for the line, it is entitled to perform normalized annual maintenance. This would include some tie replacement, crossing repairs, and weed and vegetation control. However, this annual expenditure would be significantly less than the \$52,000 figure
(continued...)

We note, however, that petitioner has claimed that the line has a net liquidation value (NLV) of \$725,000. If substantiated, this NLV would likely result in a finding on our part that CSXT is incurring substantial opportunity costs on this line. But the NLV figure is not supported and on the present record cannot provide the basis for a decision.

We will give CSXT an opportunity to substantiate this figure and to present any other information the railroad wishes us to consider for us to properly resolve this matter. We will also ask the shippers to address certain questions. All parties will then have an opportunity to reply to those responses.

Accordingly, we will require CSXT and protestants to provide additional evidence, as follows:

1. Condition of the line. CSXT should provide a statement as to the FRA safety classification of the track in the line, as required in 49 CFR 1152.32(m)(2). If the track has been classified as "excepted track," verification as to when it was so designated should be provided.
2. Rehabilitation costs. CSXT should provide evidence of any state or local requirements to rework the three paved crossings or evidence of track gauge problems in the crossings.
3. Maintenance-of-way expenses. CSXT should provide an estimate of maintenance-of-way expenses including the quantity, unit cost, and source of unit cost for each category of expense.
4. Salvage value. CSXT and protestants should provide an estimate of track salvage value, including gross salvage and cost of removal components, and the quantity, unit cost, and source of unit cost for each track component.
5. Land acreage. CSXT should identify the exact width of the right-of-way for the entire length of the line and provide a calculation of the total acreage included in the right-of-way.
6. Land title. CSXT should provide evidence showing that it has fee simple or otherwise marketable title to all properties it is valuing.
7. Land value. CSXT should provide an estimate of land value, along with supporting calculations, including comparable sales and disposition cost adjustment.
8. Traffic levels. CSXT should explain the differences between its carload traffic estimates and those submitted by protestants for the forecast year 12/1/95-11/30/96. Protestants show minor differences in total carload projections for 1995, but significant differences in the distribution of carloads among each of the shippers. CSXT should reconcile or rebut differences between the railroad's

(...continued)
presented by petitioner.

data and the shippers' data in the forecast year 1995 and should comment on protestants' projected 1996 100-carload SSC use. Protestants should also provide documentation to confirm their projections.

9. On-branch freight car costs (other than return on freight cars). CSXT should provide supporting detail for its computation of these costs. Also, it should address protestants' assertion that "the great majority of freight cars used on the line are owned by rail carriers other than CSXT."⁷

10. Return on value - freight cars (on-branch and off-branch).

(a) CSXT should address protestants' assertion (see #9 above) that, because the majority of freight cars used on the line are owned by rail carriers other than CSXT, the railroad should not be entitled to a return on the value of these cars. CSXT should provide supporting detail for the computation of the returns on value of freight cars for which it contends it is entitled to a return.

(b) CSXT should compute offsetting holding gain costs for the on-branch return on value and for the off-branch return on value, and provide supporting detail for the computation of the amounts.

11. Off-branch costs (other than return on freight cars). CSXT should provide supporting detail for the computation of this cost as required in 49 CFR 1152.32(n)(1).

12. Return on value.

(a) CSXT should provide supporting detail for its computation of working capital as required in 49 CFR 1152.34(c)(i).

(b) CSXT should provide supporting detail for its computation of income tax consequences as required in 49 CFR 1152.34(c)(ii).

Within 20 days after the service date of this decision, CSXT and protestants are directed to submit their responses, serving copies on all other parties. Replies may be filed within 30 days after the service date of this decision.

Finally, we note that the City has stated that it wants to build a bike trail over the subject right-of-way, that it has obtained over \$700,000 in funding to do so, and that it has apparently concluded an agreement with CSXT to acquire the line for trail purposes.⁸ We also note that Central Florida continues to try to sell its Mills Street facility, and that it and the City have attempted in the past to reach an agreement on business damages and relocation costs. We encourage the parties to continue these negotiations.

⁷ See verified joint protest, January 16, 1996, at 7.

⁸ If an executed sales contract exists, CSXT should provide it.

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

It is ordered:

1. CSX Transportation, Inc., Central Florida Lumber and Supply Company, d/b/a Mills & Nebraska Company, Industrial Equipment and Engineering Company, and Seacoast Supply Company are directed to submit answers to the above on or before January 6, 1997.

2. Replies to any such submittal may be filed on or before January 16, 1997.

3. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen. Commissioner Owen dissented with a separate expression.

Vernon A. Williams
Secretary

Commissioner Owen, dissenting: In the sixteen years since railroads were deregulated, one lesson that stands taller than most is that short line creation produces only winners and is the preferred alternative to abandonment. There is substantial reason why line sales virtually have exploded since 1980 while abandonment applications have declined. Excellent instruction can be found in the statement of former Federal Railroad Administrator John H. Riley before the Senate Surface Transportation Subcommittee (Senate Hearing 100-467, 100th Cong., 1st Sess., October 20, 1987, at 27-31).

So when a Class I railroad chooses to abandon a line because an entrepreneur has not come forward to operate it as a short line under a lower cost structure, and affected shippers on the line choose not to subsidize continued operation, there is an inescapable conclusion that the line is uneconomic.

The applicant has provided more detailed cost information than this agency normally requires of other applicants, the shipper(s) have effective transportation alternatives -- including rail, and municipal government continues in its offer to assist the protestant(s) in relocating. Indeed, the sole shipper located directly on the affected line continues to seek a buyer for its property and is prepared to vacate that property in a matter of hours when a willing buyer appears. The obvious intent of this complaining shipper is hold the railroad captive for its own convenience.

As I indicated in my earlier dissent in this case, given the effective transportation alternatives available to the protestants, the willingness of the City of Orlando to assist the protestants in holding down their alternative transportation costs, the absolute necessity that safety not be compromised by

requiring railroad operations to be conducted over sub-standard track, and congressional intent that this agency promote an efficient rail transportation system, I believe the abandonment should be permitted with no further delay.