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SERVICE DATE - JUNE 12, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 561X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--  
IN CLARKE COUNTY, GA

Decided: June 11, 1998

By petition filed February 23, 1998,<sup>1</sup> 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 known as the Atlanta Service Lane, Abbeville Subdivision, between milepost YYA-37.44 at East Athens and milepost YYA-39.34 at Athens, a distance of 1.9 miles in Clarke County, GA. The United Transportation Union seeks the imposition of employee protective conditions. We will grant the exemption, subject to standard employee protective conditions, an historic preservation condition, and an environmental condition.

BACKGROUND

Petitioner states that in past years only one rail patron, Clarke Milling Company, Inc. (Clarke Milling), has shipped or received freight over the line. Clarke Milling operates an agricultural supply company in Athens which is located at the beginning of the line near milepost YYA-39. According to CSXT, the shipper has made minimal use of the line to receive shipments of whole grain: in 1994 and 1995, the shipper received 38 and 32 carloads of whole grain, respectively and, in 1996, the shipper received only 7 carloads. The majority of Clarke Milling's inbound shipments are now shipped via truck, while all outbound shipments are handled exclusively by that mode. Since April 10, 1996, there have been no rail shipments either originating or terminating on the line. Overhead traffic ceased in 1997, when shipper IMC Vigoro closed its facility in East Athens at milepost YYA-37.

According to petitioner, the line near Clarke Milling's facility is in poor condition and requires extensive rehabilitation. There are three lengthy bridges between mileposts YYA-38 and YYA-39 that require immediate and extensive repairs. Petitioner estimates that bridge repairs, tie replacement, and surfacing to operate over this line in a safe condition would require an expenditure of approximately \$380,000. Petitioner asserts that there is no justification for such an expenditure in light of the lack of traffic on the line.

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on March 13, 1998 (63 FR 12577-78).

Petitioner states that the transportation options available to a shipper include the continued use of motor carriers that serve the area. In the unlikely event that a shipper may require rail service in the future, CSXT avers that its public team track facilities in Athens, located approximately 3 highway miles from Clarke Milling's facility, could be utilized.

#### 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 an abandonment application, 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 allowing it to apply its assets more productively elsewhere on its system. [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. The only shipper located on the line has not availed itself of rail service since April 1996. Nevertheless, to ensure that all parties are informed of our action, we will require CSXT to serve a copy of this decision on Clarke Milling within 5 days of the service date of this decision and to certify to us 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 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 action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on May 6, 1998.

In the EA, SEA indicated that: (1) the Georgia State Historic Preservation Officer (SHPO) has identified the entire 2.34-mile Abbeville Subdivision (consisting of the 1.9-mile segment specifically addressed in this proceeding plus a .44-mile segment of previously abandoned track)<sup>2</sup> as eligible for listing in the National Register of Historic Places; the SHPO has also indicated that elements of this rail line are located within the boundaries of the National Register-listed Athens Warehouse Historic District; and (2) CSXT has stated that a portion of the proposed branch line to be abandoned has been impacted by two Georgia Hazardous Site Inventory sites—specifically, former operations of a nearby manufactured gas plant have impacted soil and ground water on approximately one-tenth of a mile on either side of milepost YYA-39.

SEA, therefore, recommended that the following conditions be imposed on any decision granting abandonment authority: (1) CSXT shall retain its interest in and take no steps to alter the historic integrity of the right-of-way of the 1.9-mile segment of branch line addressed in this proceeding until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) because of the presence of hazardous contamination on the right-of-way, CSXT shall not engage in any salvage activities or otherwise dispose of the line until the Board is notified in writing by CSXT that it has developed, in consultation with the U.S. Environmental Protection Agency (EPA), Region 4: (a) measures approved by EPA to ensure safe salvage operations, and (b) any necessary remediation procedures, such as removing or capping portions of the right-of-way, that EPA and CSXT have agreed upon.<sup>3</sup>

No comments to the EA were filed by the June 1, 1998 due date. We will impose the conditions recommended by SEA. 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.

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<sup>2</sup> CSXT was granted authority to abandon a .44-mile segment of the Abbeville Subdivision between milepost YYA-37.44 and milepost YYA-37 in CSX Transportation, Inc.--Abandonment Exemption--in Clarke County, GA, STB Docket No. AB-55 (Sub-No. 545X) (STB served Aug. 29, 1997). By letter filed February 3, 1998, CSXT notified the Board that it had exercised the authority granted in the Sub-No. 545X proceeding, effective January 15, 1998.

As noted, the Georgia SHPO has identified the entire 2.34-mile Abbeville Subdivision as eligible for listing in the National Register of Historic Places. However, because abandonment of the .44-mile segment of line in the Sub-No. 545X proceeding had already been consummated before the Board received the SHPO's notification, the Board does not have jurisdiction to impose any condition with respect to that segment.

<sup>3</sup> Written notification should be addressed to Elaine K. Kaiser, Chief, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, N.W., Suite 500, Washington, DC 20423-0001. Following receipt and consideration of the EPA-approved plan, the Board will issue such further order regarding salvage and disposition as may be appropriate.

SEA states that, following the abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

This decision 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 in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that: (1) CSXT shall retain its interest in and take no steps to alter the historic integrity of the right-of-way of the 1.9-mile segment of branch line addressed in this proceeding until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) CSXT shall not engage in any salvage activities or otherwise dispose of the line until the Board is notified in writing by CSXT that it has developed, in consultation with EPA, Region 4: (a) measures approved by EPA to ensure safe salvage operations, and (b) any necessary remediation procedures, such as removing or capping portions of the right-of-way, that EPA and CSXT have agreed upon.

2. CSXT is directed to serve a copy of this decision on Clarke Milling 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)<sup>4</sup> to allow rail service to continue must be received by the railroad and the Board by June 22, 1998, 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 a \$1,000 filing fee. 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.”**

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<sup>4</sup> See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

5. Provided no OFA has been received, this exemption will be effective on July 12, 1998. Petitions to stay must be filed by June 29, 1998, and petitions to reopen must be filed by July 7, 1998.

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 June 12, 1999, 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 Owen.

Vernon A. Williams  
Secretary