

SERVICE DATE AUGUST 18, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 659X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN ALLEGANY  
COUNTY, MD

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: August 17, 2006

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an 8.54-mile line of railroad on its Southern Region, Huntington Division East, Georges Creek Subdivision, between milepost BAI 27.0 near Morrison and milepost BAI 18.46 at the end of the track near Carlos, in Allegany County, MD. Notice of the exemption was served and published in the Federal Register on August 25, 2005 (70 FR 49974). Before the exemption became effective,<sup>1</sup> WMS, LLC (WMS) late-filed a formal expression of intent to file an OFA to purchase the entire line and requested that the time period for submitting its OFA be tolled for 30 days. By decision served on September 23, 2005, WMS's late-filed notice of intent to file an OFA was accepted,<sup>2</sup> the time period to file an OFA was tolled until October 21, 2005, and the effective date of the exemption was further postponed until October 31, 2005.

On October 21, 2005, WMS timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the line for \$360,610.<sup>3</sup> By decision served on October 26, 2005, WMS was found to be financially responsible and the effective date of the decision authorizing the abandonment was postponed to permit the OFA process to proceed. That decision set November 21, 2005, as the deadline for either party to request the Board to establish terms and conditions for the sale of the line if WMS and CSXT could not agree on the purchase price. On November 21, 2005, WMS advised the Board that WMS had agreed to accept the purchase price and terms offered by CSXT for the acquisition and operation of the line. By decision served on

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<sup>1</sup> The exemption was scheduled to become effective on September 24, 2005, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) was filed by September 2, 2005.

<sup>2</sup> This filing had the effect of automatically staying the effective date of the exemption until October 4, 2005. See 49 CFR 1152.27(c)(2)(i).

<sup>3</sup> WMS also filed a motion for protective order under 49 CFR 1104.14 to file under seal certain confidential documents and information in connection with its OFA. The decision granting the motion for protective order was served on October 26, 2005.

December 14, 2005, WMS was authorized to acquire and operate the line, and the notice of exemption was dismissed effective on the date the sale was consummated.

On June 14, 2006, WMS filed a request to substitute for WMS its corporate affiliate James Riffin (Mr. Riffin) as the prospective purchaser of the line. On the same date, WMS and Mr. Riffin also filed a motion for protective order, pursuant to 49 CFR 1104.14, to allow WMS and Mr. Riffin to file under seal certain confidential documents and information in connection with this OFA proceeding. The motion for protective order was granted by decision served on June 27, 2006.

By decision served on July 5, 2006, Allegany County, MD (the County), was granted an extension of time until July 17, 2006, to file a reply to WMS's petition to substitute purchaser. The County submitted comments on July 17, 2006, stating that it supports the preservation of rail service on this line, but does not wish to see the line acquired by an individual or an entity that will not have sufficient capital to sustain the operations, to pursue a maintenance program that will allow safe and environmentally sound operations to continue, and to sustain any liabilities that may be incurred in the normal course of business.

Under 49 CFR 1152.27(i)(1), an offeror is permitted to substitute its corporate affiliate as the purchaser under an agreement, provided the Board has determined that either: (1) the original offeror has guaranteed the financial responsibility of its affiliate; or (2) the affiliate has demonstrated financial responsibility in its own right.

Mr. Riffin owns 98% of WMS. He has submitted financial information sufficient to determine that he is financially responsible in his own right, specifically: a certification of funds available from a savings bank and a personal financial statement. Furthermore, in a letter filed on July 12, 2006, Mr. Riffin stated that he wired to CSXT \$300,000 on March 2, 2006, and an additional \$425,000 on June 20, 2006, and that the sum of these two payments constituted the full purchase price of the line.<sup>4</sup> Because Mr. Riffin is a corporate affiliate of WMS, and has demonstrated himself to be financially responsible in his own right, the substitution of WMS for Mr. Riffin will be permitted.

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

It is ordered:

1. WMS's motion is granted.

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<sup>4</sup> In letters filed on July 10, and July 13, 2006, respectively, CSXT stated that it had consummated the sale and issued the deed to WMS.

2. Mr. Riffin is substituted as the purchaser of the line effective on the service date of this decision.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary