

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-31 (Sub-No. 38)¹

CSX CORPORATION AND CSX TRANSPORTATION, INC.—
ADVERSE ABANDONMENT APPLICATION—CANADIAN
NATIONAL RAILWAY COMPANY AND GRAND TRUNK
WESTERN RAILROAD INC.

Decided: March 2, 2001

By petition filed January 25, 2001, CSX Corporation and CSX Transportation, Inc. (collectively, CSX or petitioner) seeks waiver of certain regulations requiring the filing of certain information in an abandonment application.² CSX states that it intends to file a “third party” or “adverse” abandonment application. Grand Trunk Western Railroad Incorporated (GTW) replied on February 20, 2001. CSX filed a response in support of its petition on February 23, 2001.

CSX states that it has terminated a lease with Canadian National Railway Company (CNR)³ regarding the land underlying a portion of track located in the south side of Chicago, IL, commonly referred to as Track No. 239.⁴ Petitioner avers that it controls the land underlying the track and has terminated the lease so that it can make more effective use of the property for rail purposes. CSX claims that the tenant has refused to vacate the property. In order to permit it to assert its rights in state court, CSX will ask us to withdraw our primary jurisdiction over the line

¹ This proceeding was originally docketed as AB-279 (Sub-No. 3) under Canadian National Railway Company’s docket number. For reasons discussed herein, it has been modified to reflect Grand Trunk Western Railroad Incorporated’s docket number.

² CSX states that it also intends to petition the Board pursuant to 49 U.S.C. 10502 for an exemption from certain statutory requirements governing abandonment applications. According to petitioner, that request will be incorporated in the abandonment application.

³ Petitioner states that either GTW or CNR owns a portion of the track. GTW is a wholly-owned subsidiary of Grand Trunk Corporation, which is a wholly-owned subsidiary of CNR. GTW and CNR will be collectively referred to as CNR. GTW states in its reply that it owns Track 239 and contends that CNR is not a proper party to this proceeding. That contention would properly be the subject of a motion to dismiss accompanied by supporting evidence.

⁴ GTW’s portion of Track No. 239 is 2,954 feet long and is situated just north of CSX’s new intermodal facility at 59th Street, near 43rd Street and Damen Avenue in Chicago.

by making a finding, under section 10903 of the ICC Termination Act, that the present or future public convenience and necessity require or permit the abandonment.

CSX submits that the sought data is either not available to it or is not applicable in the circumstances because CSX will put the track into service and no shippers will lose service. Petitioner seeks waiver of the following filing requirements: (1) 49 CFR 1152.20, 1152.21, and 1152.24(b), which deal with notice requirements; (2) 49 CFR 1152.22(a)(5), which requires inclusion of the line on a system diagram map (SDM) in accordance with 49 CFR 1152.10 through .13; (3) 49 CFR 1152.22(b), which requires a description of the condition of the property, (4) 49 CFR 1152.22(c), which requires a description of the service performed on the line during the base year; (5) 49 CFR 1152.22(d), which requires revenue and cost data; (6) 49 CFR 1152.22(e), which requires identification of significant users and affected communities and statements regarding transportation alternatives and other public uses; (7) 49 CFR 1152.22(f), which requires information regarding the impact on the environment set forth at 49 CFR 1105.7 and on historic properties set forth at 49 CFR 1105.8; and (8) 49 CFR 1152.22(g), which requires data concerning current passenger service.

In its reply, GTW states that it intends to contest CSX's application. As such, GTW submits that the Board must ensure that there is an adequate and complete evidentiary record established in this proceeding. Specifically, GTW argues that CSX's petition for waiver should be denied with regard to 49 CFR 1152.20 (a)(1), (a)(2), and (b)(1), 1152.22(c), 1152.22(e), 1152.22(f), and 1105. GTW asserts that petitioner can comply with those requirements and should be required to do so.

DISCUSSION AND CONCLUSIONS

In appropriate instances, such as situations involving adverse applications, the Board, and its predecessor agency, the Interstate Commerce Commission, has waived inapplicable and unneeded portions of the abandonment regulations. See *Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*, ICC Docket No. AB-167 (Sub-No. 1094) (ICC served July 19, 1989); *City of Rochelle, Illinois - Adverse Discontinuance - Rochelle Railroad Company*, STB Finance Docket No. AB-549 (STB served June 5, 1998). CSX correctly argues that many of the cited requirements seek information that it does not possess or that are not relevant to its adverse abandonment application. GTW has nonetheless raised valid objections to some of the waiver requests.

In this case, strict adherence to all of the notice provisions at 49 CFR 1152.20, 1152.21, and 1152.24(b) would not serve the chief purpose for which they were promulgated, i.e., to alert those served by the line of an impending abandonment. According to CSX, no rail service has been provided on the line since 1996. GTW does not directly dispute this, although it expresses concerns regarding CSX's application in terms of GTW's overhead routing options in the Chicago area.

As indicated, many of the notice requirements are simply not relevant to this adverse abandonment application. However, we agree with GTW that those at 49 CFR 1152.20(a)(1), (a)(2), and (b)(1) should be met here so that GTW and other potential parties with legitimate interests in the proposal can be apprised of its status.⁵ Hence, we will require CSX to comply with the above requirements, with the exception of section 1152.20(a)(2)(i), as CSX would not have access to information on the line's significant users. The remaining notice requirements will be waived.

The content regulations at issue require information relevant to abandonments or discontinuances sought by the carriers that own, or operate, the affected lines. Most of that information, chiefly designed to show whether or not the line is a burden on interstate commerce, is either irrelevant to a third party application, not available to a third party applicant, or both.

The filing of a SDM, which is imposed by statute, is not appropriate in the context of an adverse abandonment. The line does not exist on the CSX map. GTW would not include the line on its map as a candidate for abandonment. It has no intention to abandon the line. See Tri-County Metropolitan Transportation District of Oregon—Abandonment—A Line of Burlington Northern Railroad Company in Washington County, OR, ICC Docket No. AB-6 (Sub-No. 348) (ICC served Mar. 4, 1993). Accordingly, waiver of the Board's regulations at 49 CFR 1152.22(a)(5) involving the SDM is warranted.

Similarly, CSX need not comply with the requirements of 49 CFR 1152.22(b),(c),(d), and (g). A third party does not have access to a detailed description of the condition of the property, a description of base year service on the line, necessary revenue and cost data, or information regarding current passenger service over the line. Those requirements will be waived.

As to the rural and community impact requirements at 49 CFR 1152.22(e), petitioner should comply with (e)(3) which requires a general description of the alternate sources of transportation available.⁶ However, CSX need not comply with (e)(1), as there are no stations located on GTW's portion of Track No. 239; (e)(2), as CSX would not possess information regarding significant users; and (e)(4), as petitioner proposes to put the track back into service, not abandon it.

The environmental requirements at 49 CFR 1152.22(f) will not be waived. CSX's argument is that its proposal qualifies for treatment under 49 CFR 1105.6(c). The railroad

⁵ To the extent relevant, the notice should also comport with the requirements of 49 CFR 1152.21 and should be attested to by affidavit accompanying the application in compliance with 49 CFR 1152.24(b).

⁶ CSX states in its response that it will identify the alternative rail routes that may be available to GTW should the abandonment application be granted. Petitioner should do so.

should make that argument in its filing, rather than seeking a waiver from the application of 49 CFR 1152.22(f).

In sum, CSX's petition for waiver will be granted in part and denied in part. While waivers are being granted to the extent discussed in this decision, CSX is reminded that it retains the burden to support its case with relevant evidence.

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

It is ordered:

1. CSX's petition for waiver is granted in part and denied in part as described above.
2. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings

Vernon A. Williams
Secretary