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SERVICE DATE - MARCH 20, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 556X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN RALEIGH COUNTY, WV

Decided: March 13, 1998

By petition filed December 1, 1997, 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 portion of its C&O Business Unit, the Jarrolds Valley Subdivision, between milepost CLP-15.3 at R.O. Junction and milepost CLP-18.3 at the end of the track at Picard, a distance of 3.0 miles in Raleigh County, WV.¹ We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

The segment at issue is part of an 18.3-mile line. CSXT indicates that only one shipper has shipped or received freight on the subject line in recent years: Zalkin Coal Sales, Inc. Zalkin operated a coal mine, the Bonny Mine, located at the end of the line proposed for abandonment at Picard. In 1992, Zalkin shipped 3,521 carloads of coal from the Bonny Mine. CSXT indicates that the last coal shipment occurred on May 23, 1992. After that date, the mine was closed. Petitioner adds that Zalkin has since declared bankruptcy.

According to CSXT, two of the locomotives that were used by Zalkin to switch the mine were sold to Elk River Railroad, Inc. (Elk River). On May 28, 1996, CSXT transported these locomotives from Picard to CSXT's junction point with Elk River at Gilmer, WV. CSXT states that, other than the movement of these locomotives, no other traffic has moved over the line in five and one-half years. According to CSXT, no traffic is anticipated in the future.

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

¹ Notice of the filing was served and published in the Federal Register on December 19, 1997 (62 FR 66716).

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 costs 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 rail patron previously located on the line has closed its facility at Picard. Nevertheless, to ensure that all parties are informed of our action, we will require CSXT to serve a copy of this decision on the Trustee in Bankruptcy for Zalkin within 5 days of the service date of this decision and 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 January 30, 1998. In the EA, SEA recommended that no environmental conditions be placed on any decision granting abandonment authority.

No comments to the EA were filed by the February 27, 1998 due date. Based on SEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the line's 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 set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).
2. CSXT must serve a copy of this decision on the Trustee in Bankruptcy for Zalkin within 5 days after the service date of this decision and certify to the Board that it has done so.
3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)² to allow rail service to continue must be received by the railroad and the Board by March 30, 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.**
5. Provided no OFA has been received, this exemption will be effective on April 19, 1998. Petitions to stay must be filed by April 6, 1998, and petitions to reopen must be filed by April 14, 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 March 20, 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

² 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).