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SEC

SERVICE DATE LATE RELEASE - OCTOBER 15, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 562X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--IN
ROCKY MOUNT, NASH COUNTY, NC

Decided: October 15, 1999

By decision served on August 11, 1998, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by CSX Transportation, Inc. (CSXT), of a 0.60-mile portion of the Florence Service Lane, North End Subdivision, extending from Valuation Station 4+30 at Falls Road to Valuation Station 36+00 at the end of the track near Earl Street, in Rocky Mount, Nash County, NC, subject to environmental and standard employee protective conditions.¹ The exemption was scheduled to become effective on September 10, 1998, but on August 21, 1998, New Southern of Rocky Mount, Inc. (NSRM), timely filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the line for \$17,477.28. By decision served on August 26, 1998, NSRM was found to be financially responsible and the effective date of the decision authorizing abandonment of the line was postponed to permit the financial assistance process to proceed. By letter filed on September 21, 1998, CSXT advised the Board that CSXT and NSRM had agreed on the purchase price and that they would advise the Board when the transaction is consummated.

On September 24, 1999, the City of Rocky Mount, NC (the City), filed a motion to dismiss CSXT's petition for exemption and to discontinue the proceeding on grounds that the trackage at issue is exempt under 49 U.S.C. 10906 and, therefore, is not subject to the Board's jurisdiction over the abandonment of rail lines. The City requests expedited handling of its motion in order to preserve the possibility that Centura Banks, Inc. (Centura), will construct a new office complex over part of the right-of-way. The City states that Centura requires confirmation that the right-of-way will be available for its construction project by November 1, 1999.

NSRM filed comments on October 8, 1999, asking the Board to publish notice of the City's motion in the Federal Register and allow 60 days after the Federal Register publication for all interested parties to respond substantively to the motion. In the event that no Federal Register publication is required, NSRM requests that the date for filing substantive replies to the motion be extended by no less than 60 days.² NSRM states that consummation of its purchase of the line from

¹ Notice was published in the Federal Register on May 13, 1998 (63 FR 26675).

² NSRM expresses concern that the owner of the right-of-way, Rocky Mount Mills, may remove the track from the right-of-way before the Board has determined the jurisdictional question, and asks the Board to make it clear that no tracks can be lawfully removed before the Board makes
(continued...)

CSXT is imminent, and that it intends to provide common carrier rail service to its own place of business in Rocky Mount, to Log Cabin Homes, and to any additional shippers and receivers who might locate along the line. CSXT filed a statement on October 8, 1999, supporting NSRM's request. The City filed a reply to NSRM's comments on October 12, 1999.

The City has shown good cause for the expedited handling of its motion and, therefore, NSRM's request for a 60-day comment period will be denied. Because copies of the City's motion have been served on all interested parties, notice of the filing in the Federal Register is not necessary. A brief extension of the time period for filing replies is warranted and, therefore, replies will be due by October 25, 1999. Any rebuttal will be due by October 29, 1999. While this extension will not permit the Board to meet the City's requested date of November 1, 1999, for a decision on its motion, it is necessary for the fair and complete development of the record. The Board will expeditiously issue a decision resolving the merits of the motion following the closing date for this record.

It is ordered:

1. NSRM's request for Federal Register publication of notice of the City's motion and for a 60-day comment period is denied.
2. Replies to the motion to dismiss filed by the City of Rocky Mount are due by October 25, 1999.
3. Any rebuttal is due by October 29, 1999.
4. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

²(...continued)

its determination. The City replied that Rocky Mount Mills has only informed CSXT of its contractual right to remove the rails. The City does not have any information concerning Rocky Mount Mills's intentions regarding removal of the track. It should be noted that if Rocky Mount Mills or any other person removes the track and the Board determines that it does have jurisdiction over the line and the line is needed for rail service, the track will have to be relaid at that person's expense.