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SERVICE DATE – AUGUST 12, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 702X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN MARION COUNTY,
IND.

Decided: August 10, 2010

BACKGROUND

By petition filed on April 26, 2010, 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 0.82-mile line of railroad in its Northern Region, Great Lakes Division, Indianapolis Terminal Subdivision, between milepost QSZ 3.60 and milepost QSZ 4.42, known as the Speedway Running Track, in Indianapolis, Marion County, Ind. Notice of the exemption was served and published in the Federal Register on May 14, 2010 (75 Fed. Reg. 27,383-84). CSXT also seeks exemption from the offer of financial assistance (OFA) provisions of 49 U.S.C. § 10904. We will grant the exemption from 49 U.S.C. § 10903, subject to environmental and standard employee protective conditions, but will deny the request for exemption from 49 U.S.C. § 10904.

According to CSXT, it has used the line for the past several years solely to serve Heritage-Crystal Clean (HCC), located near the beginning of the line at milepost QSZ 3.60. HCC has expressed interest in acquiring and maintaining the line to allow for expanded intra-plant operations and rail use, and it has executed a letter of non-opposition to the proposed abandonment (Exhibit G). CSXT states that it does not expect any rail-oriented business to develop on the line. CSXT points out that there is no overhead traffic on the line and that there is no demand for service on the line, other than from HCC. CSXT also states that it has not been advised of any opposition to the proposed abandonment. CSXT indicates that it seeks to abandon the line for purposes of reclassifying it as excepted track under 49 U.S.C. § 10906 and selling or leasing the line to HCC. That would allow HCC to perform intra-plant operations on its own, without incurring a common carrier obligation. CSXT concludes that, because the line is no longer needed for common carrier purposes, retention of the line as regulated track is no longer necessary.

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 the application process, an exemption will minimize the need for Federal regulatory control over the rail transportation system, and will reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). An exemption also will foster sound economic conditions and encourage efficient management by relieving CSXT from the costs of continuing to maintain and operate the line, consistent with 49 U.S.C. §§ 10101(5) and (9). Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. HCC, the only active shipper on the line, does not object to the proposed transaction. There is no overhead traffic on the line and no demand for service on the line other than from HCC. To ensure that HCC is informed of our action, however, we will require CSXT to serve a copy of this decision on HCC so that it is received by HCC within 5 days of the service date of this decision and to certify contemporaneously to the Board that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Exemption from Section 10904. Exemptions from the OFA process at 49 U.S.C. § 10904 have been granted from time to time, when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service. See, e.g., Union Pac. R.R.–Aban. Exemption–In Pima County, Ariz., AB 33 (Sub-No. 141X) (STB served Feb. 16, 2000). Here, CSXT has not justified an exemption from the OFA process, as it has not demonstrated that the right-of-way is needed for a valid public purpose. Rather, CSXT seeks the exemption simply to facilitate a sale or lease of the line to HCC for its private use. Because we find no reasonable basis for departing from Congress’s objective of providing an opportunity for maintaining common carrier rail service as part of the abandonment process, CSXT’s request for an exemption from the OFA provisions at 49 U.S.C. § 10904 will be denied and the OFA process will be allowed to proceed. See Norfolk S. Ry.–Aban. Exemption–in Sommerset County, Pa., AB 290 (Sub-No. 305X) (STB served Jan. 16, 2009) (requested exemption from OFA and public use requirements to facilitate sale of a line to the shipper for its private use denied). Nevertheless, given the apparent lack of need for this line by any shipper other than HCC, any person seeking to file an OFA must provide evidence of how this line will be turned into a viable common carrier line serving shippers other than HCC.

Employee protection. 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 Railroad–Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Environmental review. CSXT has submitted an environmental and historic 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 C.F.R. § 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) on June 25, 2010, requesting comments by July 26, 2010. In the EA, SEA recommended that one condition be imposed on any decision granting abandonment authority.

In the EA, SEA states that the National Geodetic Survey (NGS) has identified 1 geodetic station marker that may be affected by the proposed abandonment. Therefore, SEA recommends that CSXT be required to notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy this marker in order to plan for the possible relocation of the geodetic station marker by NGS.

Comments to the EA were due by July 30, 2010. No comments to the EA were received. Accordingly, we will impose the environmental condition recommended by SEA in the EA. Based on SEA's recommendation, 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.

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 by CSXT of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979), and subject to the condition that CSXT shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy the geodetic station marker identified by NGS to plan for the possible relocation by NGS of this marker.
2. CSXT's request for exemption from the provisions of 49 U.S.C. § 10904 is denied.
3. CSXT is directed to serve a copy of this decision on HCC so that it is received by HCC within 5 days after the service date of this decision and to certify contemporaneously to the Board that it has done so.
4. An OFA under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 23, 2010, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,500. See 49 C.F.R. § 1002.2(f)(25).
5. 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.”**

6. Provided no OFA has been received, this exemption will be effective on September 11, 2010. Petitions to stay must be filed by August 27, 2010, and petitions to reopen must be filed by September 7, 2010.

7. Pursuant to the provisions of 49 C.F.R. § 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 August 12, 2011, 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 no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.