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SERVICE DATE - JANUARY 9, 1997

SURFACE TRANSPORTATION BOARD<sup>1</sup>

CERTIFICATE AND DECISION

Docket No. AB-55 (Sub-No. 500)

CSX TRANSPORTATION, INC.--ABANDONMENT--IN BARBOUR,  
RANDOLPH, POCAHONTAS, AND WEBSTER COUNTIES, WV

Decided: December 31, 1996

The abandonment. CSX Transportation, Inc. (CSXT), filed an application on January 27, 1995, for authority to abandon its 122.89-mile rail line between milepost BUI-0.0 at Tygart Jct. and milepost BUI-28.40 at Elkins; between milepost BUK-28.40 at Elkins and milepost BUK-121.70 at Bergoo; and between milepost BUM-0.00 at Huttonsville Jct. and milepost BUM-1.19 at Elkins Jct., in Barbour, Randolph, Pocahontas, and Webster Counties, WV. The ICC denied the abandonment request in its entirety,<sup>2</sup> and CSXT's petition for reconsideration, in decisions served July 11, 1995, and August 10, 1995, respectively.

To the extent the ICC decision denied the application to abandon the portion of the line between milepost BUI-28.40 at Elkins and milepost BUK-121.70 at Bergoo, it was reversed and remanded in CSX Transportation, Inc. v. STB, No. 95-1513 (D.C. Cir. Oct. 11, 1996). The court instructed the Board to permit CSXT to abandon the line segment without further administrative proceedings.

CSXT and the State of West Virginia (West Virginia), in a letter filed December 17, 1996, jointly advised that they have reached an agreement in principle for West Virginia to purchase the entire line and wish to close on the transaction as quickly as possible. Because they would prefer that the Elkins-Bergoo segment be abandoned prior to West Virginia's purchase, they request that a decision be issued as expeditiously as possible authorizing CSXT to abandon this line segment.

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<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board) effective on January 1, 1996. Section 204(c) of the ICCTA provides, in general, that, if a court remands a suit against the ICC that was pending on the date of that legislation and involves functions retained by the ICCTA, subsequent proceedings related to the case shall proceed under the applicable law and regulations in effect at the time of the subsequent proceedings. The functions at issue in this proceeding were retained and are now found at 49 U.S.C. 10903-05. Thus, the provisions of current 49 U.S.C. 10903-05 apply to this proceeding on remand.

<sup>2</sup> The decision stated that if significant coal movements did not begin on the Elkins-Bergoo line segment within the 1-year period from its effective date, the ICC would be receptive to, and would expeditiously consider granting, a petition for an abandonment exemption of that portion.

We are reopening this proceeding to approve the abandonment of the Elkins-Bergoo line segment, and, consistent with the parties' request, we are granting expedited action to the extent possible.

Labor protection. In approving this partial abandonment, we must ensure that affected rail employees are adequately protected. We have found that the conditions imposed in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), satisfy these statutory requirements and they will be imposed here.

Environmental issues. The Section of Environmental Analysis (SEA) served an environmental assessment (EA) on March 6, 1995. SEA examined the environmental and energy impacts of this proposed abandonment and found them not to be significant. Areas of consideration included, but were not limited to, energy consumption, air and water quality, noise levels, and public safety.

In the EA, SEA noted that the right-of-way may be suitable for other public purposes following abandonment and salvage. It also noted that the West Virginia Division of Culture and History had determined that the entire line, including all structures which are 50 years old or older, is eligible for listing in the National Register of Historic Places. Therefore, SEA recommended that a condition be imposed requiring CSXT to retain its interest in and take no steps to alter the historic integrity of any portion of the line, including all sites and structures that are 50 years old or older, until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, is completed. SEA further noted that the West Virginia Department of Natural Resources (WVDNR) had requested that CSXT consult with it before any ballast is removed from the right-of-way; and that the U.S. Natural Resources Conservation Service had requested (1) that the prime farmland soils it had identified adjacent to the right-of-way not be disturbed during salvage operations, and (2) that salvage crews repair or upgrade any drainage systems along the line that are functional and adjacent to lands in current agricultural production. SEA recommended that the requested conditions be imposed. SEA concluded that, subject to the recommended conditions, the proposed abandonment will not significantly affect the quality of the human environment and that the environmental impact statement process was unnecessary.

In response to the comments received, SEA reaffirmed the conclusions and recommendations of the EA. We concur with SEA's recommendations but note that the conditions generally apply to salvage activities. Because West Virginia intends to preserve the line for the future restoration of rail service, the recommended conditions will only apply in the event of salvage activities. Therefore, we conclude that the proposed abandonment, if implemented subject to the conditions set forth below, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Exemptions. Under 49 U.S.C. 10502, exemptions from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and public use requirements of 49 U.S.C. 10905 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.<sup>3</sup> Here, the parties seek to consummate the sale of the line to West Virginia after its abandonment as expeditiously as possible. To expedite the post-abandonment transfer of the line segment we will, on our own motion, exempt the transaction from the requirements of 49 U.S.C. 10904-05.

The line segment between Elkins and Bergoo is being acquired by West Virginia to assure that a rail line will be available when there is a renewed need for rail service, a valid public purpose. Nor is there an overriding public need for rail service at this time. Indeed, the court has instructed us to grant the abandonment of the line and there are no active shippers that would be harmed by our exempting the abandonment from the OFA procedures. Imposition of OFA procedures or a public use condition could delay the transfer and jeopardize the timely completion of the sales transaction. Accordingly, to accommodate the parties request for expedition, we will, on our own motion, exempt the proposed abandonment of the line segment between Elkins and Bergoo from the OFA and public use requirements of 49 U.S.C. 10904-05.

The evidence of record establishes that the proposed exemptions from 49 U.S.C. 10904-05 meet the criteria of 49 U.S.C. 10502. Applying the OFA or public use requirements, in this instance, is not necessary to carry out the rail transportation policy. Allowing the abandonment to become effective immediately without them will minimize the need for Federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. Because the line is not being used at the present and is being acquired by West Virginia to assure that it will be available when the need develops, regulation is not necessary to protect shippers from an abuse of market power.

Other matters. We will not provide an opportunity for interested persons to file trail use/rail banking requests in connection with the Elkins-Bergoo line segment. Under section 8(d) of the National Trail Systems Act, 16 U.S.C. 1247(d), trail use/rail banking is voluntary and can only be implemented if an abandoning railroad agrees to negotiate an agreement. Because CSXT has already agreed to sell the line segment to West Virginia after it is abandoned, CSXT can be expected to decline any offers to negotiate for interim trail use/rail banking.

Because we are exempting the abandonment of the Elkins-Bergoo line segment from 49 U.S.C. 10904-05, we have eliminated the need to extend the effective date of the abandonment to consider OFAs and requests for public use conditions. Therefore, we will make the decision effective on January 9, 1997.

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<sup>3</sup> See Southern Pacific Transportation Company--Discontinuance of Service Exemption--In Los Angeles County, CA, Docket No. AB-12 (Sub-No. 172X), et al. (ICC served Dec. 23, 1994); Missouri Pacific Railroad Company--Abandonment--In Harris County, TX, Docket No. AB-3 (Sub-No. 105X) (ICC served Dec. 22, 1992); Chicago & North Western Transportation Company--Abandonment Exemption--In Blackhawk County IA, Docket No. AB-1 (Sub-No. 226X) (ICC served July 14, 1989); and Iowa Northern Railway Company--Abandonment--In Blackhawk County, IA, Docket No. AB-284 (Sub-No. 1X) (ICC served Apr. 1, 1988).

It is certified that:

1. The present and future public convenience and necessity permit the abandonment of the line segment between milepost BUK-28.40 at Elkins, WV, and milepost BUK-121.70 at Bergoo, WV, subject to the employee protective conditions outlined in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and, in the event of salvage activities, the following additional conditions: (1) CSXT must retain its interest in and take no steps to alter the historic integrity of any portion of the line, including all sites and structures that are 50 years old or older, until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, is completed; (2) CSXT must consult with WVDNR before any ballast is removed from the right-of-way; and (3) CSXT may not disturb the prime farmland soils identified by the U.S. Natural Resources Conservation, and must repair or upgrade any drainage systems along the line which are functional and which are adjacent to land in current agricultural production.

2. Abandonment of the line will not result in a serious adverse impact on rural and community development.

3. As conditioned, this action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proceeding is reopened.

2. Under 49 U.S.C. 10502, we exempt the abandonment of the line segment between milepost BUK-28.40 at Elkins, WV, and milepost BUK-121.70 at Bergoo, WV, from the requirements of 49 U.S.C. 10904-05.

2. These findings will be published in the Federal Register on January 9, 1997.

3. Subject to the conditions set forth above, applicant may abandon and discontinue service on the line after the effective date of this certificate and decision.

4. This decision shall be effective on January 9, 1997.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams  
Secretary