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SERVICE DATE - APRIL 28, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 4X)¹

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—
IN VERMILLION AND WARREN COUNTIES, IN

Decided: April 25, 2003

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 6.12 miles of railroad between milepost QSO-5.18 near the Illinois/Indiana State line and milepost QS0-11.30 near Olin, in Vermillion and Warren Counties, IN. Notice of the exemption was served and published in the Federal Register on September 28, 2001 (66 FR 49741-42). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on October 30, 2001, but on October 11, 2001, Flex-N-Gate Corporation (Flex) late-filed a notice of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) to purchase the entire line.

By decision served January 31, 2002, Flex was found financially responsible and the effective date of the exemption authorizing the abandonment was postponed to permit the OFA process to proceed. The January 31 decision also set February 27, 2002, as the deadline for either party to request the Board to establish the terms and conditions for the purchase price if CSXT and Flex could not agree on the purchase price. Both the effective date of the exemption and the deadline for filing requests for the establishment of terms and conditions were extended several times to permit continued negotiations. On September 4, 2002, Flex informed the Board that the parties had reached an agreement for Flex to purchase approximately 5.91 miles of the right-of-way from NYC between

¹ The notice of exemption served September 28, 2001, embraced STB Docket No. AB-55 (Sub-No. 597X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Vermillion and Warren Counties, IN.

milepost QSO-5.18 and milepost QSO-11.09.² By decision served September 17, 2002, Flex was authorized to acquire the rail line between milepost QSO-5.18 and milepost QSO-11.09.³

In a motion filed on April 22, 2003, Flex and FNG Logistics Co. (FNG), a wholly owned subsidiary of Flex, request permission to substitute FNG for Flex, as the purchaser of the line.⁴ Flex asserts that FNG, as a separate entity focused on transportation, will be better able to manage the rail line and that, for this reason and other business reasons, Flex desires that FNG acquire and manage the line. FNG and NYC have consummated this transaction, and FNG currently holds legal title to the property, but the line is currently undergoing rehabilitation and service has not yet commenced. In its pleading, Flex states that it will agree to the Board's usual conditions that it guarantee the financial responsibility and performance of FNG. Therefore, the substitution of FNG for Flex will be permitted.⁵

This decision does not significantly affect either the quality of the human environment or the conservation of energy resources.

² On May 14, 2002, CSXT filed a letter stating that one ending milepost was erroneously identified in the verified notice, and that the proposed abandonment and discontinuance is actually between milepost QSO-5.18 and QSO-11.09, rather than between milepost QSO-5.18 and milepost QSO-11.30 as previously indicated. In a decision served June 10, 2002, the exemption was modified to delete the portion of the right-of-way between mileposts QSO-11.09 and QSO-11.30 from the abandonment and discontinuance authorizations and from the financial assistance process.

³ By letter filed on February 11, 2003, NYC and CSXT stated that they transferred the line to Flex on December 13, 2002.

⁴ Under 49 CFR 1152.27(i), an offeror is permitted to substitute its corporate affiliate as the purchaser under an agreement, provided the Board has determined that either: (1) the original offeror has guaranteed the financial responsibility of its affiliate; or (2) the affiliate has demonstrated financial responsibility in its own right.

⁵ On April 23, 2003, Vermilion Valley Railroad Company (VVRC) filed a notice of exemption in STB Finance Docket No. 34340, Vermilion Valley Railroad Company, Inc.–Operation Exemption–FNG Logistics Co. – Vermillion and Warren Counties, IN, through which VVRC would provide service over the line under an agreement to be reached with FNG. That transaction is scheduled to be consummated on or after the April 30, 2003 effective date of that exemption.

It is ordered:

1. The motion of Flex and FNG is granted.
2. FNC is substituted as the purchaser of the line effective on the service date of this decision.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary