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SERVICE DATE - NOVEMBER 16, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-344 (Sub-No. 1X)

CHICAGO SOUTHSORE & SOUTH BEND RAILROAD—ABANDONMENT
EXEMPTION—IN LAPORTE COUNTY, IN

Decided: November 15, 2001

By petition filed on July 31, 2001,¹ Chicago Southshore & South Bend Railroad (CSS) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a less than one-half mile (approximately 2,400-foot) line of railroad extending from a connection at the east end of CSS's Lincoln Yard, near Second Street, to the end of the line at the facility of the Pioneer Lumber Company (Pioneer) at Michigan City (the City), in LaPorte County, IN. We will grant the exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

CSS, a Class III rail carrier, owns and operates approximately 36 miles of rail line in Indiana and Illinois and has trackage rights over approximately 165 miles of rail line owned by other carriers. Because the line to be abandoned is stub-ended, it carries no overhead traffic.

According to CSS, the sole active shipper on the line for more than a decade has been Pioneer. CSS states that, from January 1, 1998, through June 30, 2001, it handled a total of 6 carloads of inbound shipments of lumber for Pioneer (1 carload in 1998, no carloads in 1999, 5 carloads in 2000, and no carloads as of June 30, 2001). CSS submits that, under rate quotes for 2001, CSS's portion of the through-rate for the Pioneer traffic was approximately \$555 per carload and, assuming a similar average annual level of traffic from Pioneer in the future, CSS projects that the line would provide only an average of approximately \$1,110 in revenue per year. CSS maintains that such a low volume of traffic and resulting revenue are insufficient to justify continued maintenance and operation of the line.

Following abandonment of the line, CSS states that Pioneer will have sufficient alternative transportation options available to it. In fact, it supports the abandonment.² Pioneer

¹ Notice of the filing was served and published in the Federal Register on August 20, 2001 (66 FR 43609).

² Exhibit D of the petition is a letter of support from Pioneer, indicating that the shipper
(continued...)

is currently using a CSS-owned ramp located approximately 2 miles from Pioneer's facility to receive its lumber and CSS states that Pioneer will continue to have access to this ramp after the abandonment. In addition, CSS states that lumber is well suited to transportation by truck and that the junction of two state highways is located one city block from Pioneer's facility and an interstate highway is about 9 miles away.

Finally, CSS submits that abandonment of the line will enhance public safety by eliminating three grade crossings within the City and one rail crossing with National Railroad Passenger Corporation's high-speed Detroit, MI, to Chicago, IL, main line.

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 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 CSS from the cost of owning and maintaining the line and by allowing CSS to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because Pioneer, the only shipper on the line, does not object to the abandonment and will have adequate transportation alternatives available, including access to the CSS-owned ramp that it currently uses.³ Nevertheless, to ensure that Pioneer is informed of our action, we will require CSS to serve a copy of this decision on Pioneer within 5 days of the service date and certify to us that it has done so.

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

²(...continued)
does not rely on CSS rail service over the line and has transportation alternatives that meet its needs.

³ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

CSS 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 abandonment. 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 August 28, 2001. In the EA, SEA indicated that the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified one geodetic marker that may be affected by the proposed abandonment. SEA also indicated that the Indiana Department of Transportation, Railroad Section (INDOT), expressed concerns regarding specific procedures for the proper restoration of road surfaces prior to initiation of any salvage activities. SEA therefore recommends that the following conditions be imposed on any decision granting abandonment authority to alleviate the concerns of NGS and INDOT: (1) that CSS notify NGS at least 90 days prior to any salvage or demolition activities that may disturb or destroy the geodetic marker on the line, so that plans can be made for its relocation; and (2) that CSS consult with INDOT prior to initiation of any salvage activities.

A comment in response to the EA was filed by the Indiana Department of Natural Resources and was considered by SEA, but did not change its recommendations. Accordingly, we will impose the conditions recommended by SEA. Based on SEA's recommendations, 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. Although SEA has indicated in the EA that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.⁴

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 CSS of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that: (1) CSS shall notify NGS 90 days prior to any salvage or demolition activities that may disturb or destroy the geodetic marker on the line so that plans can be made for its relocation; and (2) CSS shall consult with INDOT prior to initiation of any salvage activities.

⁴ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by September 10, 2001.

2. CSS is directed to serve a copy of this decision on Pioneer within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 26, 2001, 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 the filing fee, which currently is set at \$1,000. 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 December 16, 2001. Petitions to stay must be filed by December 3, 2001, and petitions to reopen must be filed by December 11, 2001.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSS 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 CSS’s filing of a notice of consummation by November 16, 2002, 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 Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary