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SERVICE DATE - LATE RELEASE JUNE 18, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 646X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN PINELLAS COUNTY, FL

Decided: June 17, 2004

By petition filed on March 1, 2004, 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 line of railroad in CSXT's Southern Region, Jacksonville Division, Clearwater Subdivision, extending from milepost SY 893.80 to milepost SY 895.65, a distance of 1.85 miles, in St. Petersburg, Pinellas County, FL. Notice of the filing of the petition was served and published in the Federal Register on March 19, 2004 (69 FR 13123-24). A request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed on June 1, 2004, by Pinellas County (the County). We will grant the exemption, subject to trail use, public use, and standard employee protective conditions.

BACKGROUND

There are currently two shippers located on the line: Labar, Inc. (Labar), whose principal commodity is bagged/palletized concrete, and Cox Lumber Co. (Cox). According to CSXT, Labar and Cox have made minimal use of rail transportation over the last several years. CSXT has notified Labar and Cox of the proposed abandonment and states that it has reached agreements with both Labar and Cox for rail transportation service at alternative locations. Consequently, Labar and Cox, in letters attached as Exhibit B to CSXT's petition, have indicated that, if the alternative service is provided, they are unopposed to the proposed abandonment.

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 CSXT from

the costs of owning and maintaining the line and allowing it to use its assets more productively elsewhere on its 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. The two shippers on the line, Labar and Cox, have reached an agreement with CSXT for alternative rail transportation, and do not oppose the proposed abandonment. Nevertheless, to ensure that Labar and Cox are informed of our action, we will require CSXT to serve a copy of this decision and notice on them within 5 days from the service date and certify to the Board that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

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 R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

CSXT 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 action. See 49 CFR 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 April 30, 2004, and requested comments by May 31, 2004. No comments to the EA were received. Based on SEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

As previously noted, the County filed its request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and for imposition of a public use condition under 49 U.S.C. 10905 on June 1, 2004. The March 19, 2004 notice provided that any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 was due by March 29, 2004. The Board has a policy of accepting filings after the due date when good cause is shown. See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997). Because there is no indication that the County's late-filed request will prejudice any party, it will be accepted.

The County seeks to negotiate with CSXT for the right-of-way between 34th Street South (U.S. Highway 19) at milepost SY 893.80 and Martin Luther King Blvd. (9th Street) at milepost SY 895.67 for use as a trail. Because the proposed abandonment only extends to SY milepost 895.65, a NITU is not available beyond that point. The County has submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-

of-way for rail service as required under 49 CFR 1152.29. By facsimile filed on June 15, 2004, CSXT states that it is willing to negotiate with the County for interim trail use. Because the County's request complies with the requirements of 49 CFR 1152.29, and CSXT is willing to enter into trail use negotiations, we will issue a NITU from mileposts SY 893.80 to SY 895.65. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in the EA that, following abandonment and salvage of the line, the right-of-way may be suitable for other public use. The County requests imposition of a 180-day public use condition prohibiting CSXT from: (1) disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels. The County states that the corridor would provide an extension of the Pinellas Trail that will link the downtown area of St. Petersburg to the rest of the county.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The County has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the rail line to be abandoned, commencing from the effective date of this decision and notice to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. If a trail use agreement is reached on a portion of the right-of-way, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with the County, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated

here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

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 employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), and the conditions that CSXT shall: (1) leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (except track, ties, and signal equipment) for a period of 180 days from the effective date of this decision and notice, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; and (2) comply with the terms and conditions for implementing interim trail use/rail banking as set forth below.

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

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by June 28, 2004, 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 \$1,100. See 49 CFR 1002.2(f)(25).

8. 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.”**

9. Provided no OFA has been received, this exemption will be effective July 18, 2004. Petitions to stay must be filed by July 6, 2004, and petitions to reopen must be filed by July 13, 2004.

10. Pursuant to the provisions of 49 CFR 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 June 18, 2005, 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 Nober, Commissioner Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary