

29064  
EB

SERVICE DATE - JULY 6, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 560X)

CSX TRANSPORTATION, INC.--ABANDONMENT  
EXEMPTION--IN LOGAN COUNTY, WV

Decided: June 25, 1998

By petition filed March 18, 1998, 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 0.72-mile portion of its Logan Subdivision, extending between milepost CMB-0.33 at Bandmill Junction and milepost CMB-1.05 at Melville, in Logan County, WV (the Line). Notice of the institution of an exemption proceeding was published in the Federal Register at 63 FR 17044 on April 7, 1998. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the petition, subject to labor protective conditions.

BACKGROUND

CSXT claims that in recent years only one shipper, Austin Powder Company (Austin Powder), has used the Line to ship or receive freight. Austin Powder operates a plant that manufactures explosives at Melville. According to CSXT, traffic for Austin Powder consisted of inbound shipments of ammonium nitrate totaling 78 carloads in 1996, 51 carloads in 1997, and 12 carloads in 1998 (through March 9, 1998). CSXT states that Austin Powder plans to move its operation at Melville to CSXT's Peach Creek Yard TransFlo Services facility (Peach Creek). To accommodate Austin Powder, CSXT says that it will not abandon the Line until Austin Powder has completely relocated its operation to the Peach Creek facility. CSXT certified that a copy of its petition was served on Austin Powder.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without 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 of this abandonment under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the abandonment process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will allow CSXT to reallocate elsewhere on its rail system the funds and materials needed to maintain and operate the Line, thereby promoting safe and efficient rail transportation,

fostering sound economic conditions, and encouraging efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Because the only shipper to use the Line is relocating its operation to another CSXT rail served facility and because neither the shipper nor anyone else opposes the proposed abandonment, we find that regulation is not necessary to protect shippers from an abuse of market power. Nevertheless, to ensure that the shipper is informed of our decision, we will direct CSXT to serve a copy of this decision on Austin Powder within 5 days of the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

UTU requests imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

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 abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effect of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on May 18, 1998, recommending that no environmental or historic conditions be imposed on the abandonment. No comments were filed in response to the EA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or conservation of energy resources. Although SEA has indicated 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.<sup>1</sup>

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 0.72-mile rail line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

---

<sup>1</sup> Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by April 27, 1998.

2. CSXT must serve a copy of this decision on Austin Powder within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(c)(1)<sup>2</sup> to allow rail service to continue must be received by the railroad and the Board by July 16, 1998, 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 a \$1,000 filing fee. 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 on August 5, 1998. Petitions to stay must be filed by July 21, 1998. Petitions to reopen must be filed by July 31, 1998.

6. 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 July 6, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

---

<sup>2</sup> See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).