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SERVICE DATE - JANUARY 16, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 642X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN
VERMILION COUNTY, IL

Decided: January 15, 2004

By petition filed on September 29, 2003, 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 5.9-mile line of railroad in CSXT's Western Region, Chicago Division, Woodland Subdivision, extending from milepost OZE 107.1 at Rossville Junction to milepost OZE 113.0 at Henning, in Vermilion County, IL. Notice of the filing of the petition was served and published in the Federal Register on October 17, 2003 (68 FR 59842). The exemption will be granted, subject to an environmental condition and standard employee protective conditions.

BACKGROUND

Fall Grain is the only rail patron currently located on the line. CSXT states that, in September 2002, Fall Grain purchased a grain elevator on the line that was previously owned by Consolidated Grain & Barge (CG&B). According to CSXT, CG&B operated the elevator as a public elevator, permitting other companies the use of the elevator. CSXT states that, since the purchase of the elevator by Fall Grain, rail shipments have declined dramatically, in part because the elevator is now solely used by Fall Grain. CSXT submits that Fall Grain shipped 30 carloads in 2002 and 57 carloads through June 2003.

CSXT states that the line is currently classified as Federal Railroad Administration excepted track and is in extremely poor condition. According to CSXT, the rail, which was milled between 1903 and 1906, is 85-pound rail and is unable to withstand significant swings in temperatures. In extreme cold, the rail tends to break and, in extreme heat, to misalign under the weight of a train because the rail has no anchors. CSXT submits, as Exhibit G to its petition, a verified statement by CSXT roadmaster, Gale Free, who inspected the line and reported that the line needs a major rebuild program. The inspection revealed that the joint bars, which hold the rail together, are loose and many of them are broken and mismatched. CSXT states that, because of the condition of the line, the roadmaster or the track inspector must inspect the line before every use. CSXT states that these frequent inspections still do not protect against all rail breaks or misalignments. CSXT asserts that this inefficient and ineffective method of operation can only be remedied by replacing the rail. CSXT

submits, as Exhibit H to its petition, a verified statement by district project engineer, David J. Fette, who estimates the cost of replacing the rail with used rail at approximately \$670,090. In replacing the rail, CSXT would also be required to repair all grade crossings on the line at a cost of approximately \$196,118, replace 3 turnouts at a cost of approximately \$186,000, and resurface the track at a cost of approximately \$47,440, for a total cost of \$1,099,648.

In addition to the track work, CSXT states that a timber trestle bridge located at or near milepost 0ZE 109.30 also requires significant repairs, including the replacement of 102 bridge ties, 3 caps, 3 subcaps, and the installation of 10 timber piles. Although these repairs would extend the useful life of this 91-year-old bridge for another 5 years, CSXT submits that the bridge will need to be replaced within the next 10 years at an estimated cost of \$600,000. Without the repairs, CSXT foresees an embargo of the line.

CSXT estimates the total cost of rehabilitation (rail replacement and bridge repair) to be \$1,145,548. CSXT argues that the nominal amount of traffic on the line does not justify this capital expenditure. It provides an economic analysis of the line that shows a profit in the base year, ending June 30, 2003, of \$77,016. However, the profit is diminished to \$37,147 in the forecast year as a result of the repairs required on the bridge and opportunity costs. In the subsidy year, the profit of the forecast year turns into a loss of \$150,357 as a result of the capital expenditures required to maintain service on the line.

CSXT states that motor carrier transportation is available to Fall Grain. CSXT also states that it has offered to sell the line, after it is abandoned, to Fall Grain for its net liquidation value but Fall Grain has not definitively responded to the offer.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds 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 a line of railroad that is in need of repair [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. The only shipper on the line, Fall Grain, apparently has viable motor carrier alternatives and has not objected to the proposed abandonment. Nevertheless, to ensure that Fall Grain is informed of the Board's action, CSXT will be required to serve a copy of this decision on Fall Grain within 5 days from the service date and certify to the Board that it has done so. Given the market power finding, it is not necessary to determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board's exemption authority may not be used to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979) will be imposed.

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. The Board's 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 November 28, 2003, and requested comments.

In the EA, SEA indicated that the U.S. Environmental Protection Agency - Region 5 (EPA - Region 5) has expressed concerns about the removal and salvage methods to be used by CSXT, the final disposition of crossties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills from construction equipment, soil erosion and stormwater runoff mitigation practices, and the revegetation of the right-of-way with native flora. To address these concerns, SEA recommends that a condition be imposed on any decision authorizing abandonment to require CSXT, prior to commencement of any salvage activities, to contact EPA - Region 5, concerning final disposition of crossties preserved with creosote and the revegetation of the right-of-way with native flora.

No comments to the EA were received by the December 29, 2003 due date. Accordingly, the condition recommended by SEA in the EA will be imposed. The proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in the EA that, following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. 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 November 6, 2003. However, no one has sought a public use condition, and no such condition will be imposed.

It is ordered:

1. Under 49 U.S.C. 10502, an exemption from the prior approval requirements of 49 U.S.C. 10903 for the abandonment by CSXT of the above-described line is granted, subject to employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), and subject to the condition that CSXT shall, prior to commencement of any salvage activities, contact EPA - Region 5, concerning final disposition of crossties preserved with creosote and the revegetation of the right-of-way with native flora.

2. CSXT is directed to serve a copy of this decision on Fall Grain 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 January 26, 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).

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 February 15, 2004. Petitions to stay must be filed by February 2, 2004, and petitions to reopen must be filed by February 10, 2004.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), CXST 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 CXST’s filing of a notice of consummation by January 16, 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.

Vernon A. Williams
Secretary