

SERVICE DATE - SEPTEMBER 19, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 548X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN MONROE COUNTY, IN

Decided: September 17, 1997

By petition filed on June 3, 1997,¹ 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 4.26-mile portion of its railroad line known as the Louisville Service Lane, Monon Subdivision, extending from milepost Q-217.67 at Hunters to milepost Q-213.41 at the end of track at Ellettsville, in Monroe County, IN. The United Transportation Union (UTU) seeks imposition of labor protective conditions. A request for imposition of a public use condition was filed by the Indiana Department of Transportation (INDOT). We will grant the exemption, subject to a public use condition and standard employee protective conditions.

BACKGROUND

Wickes Lumber Company (Wickes), the only shipper on the line, operates a lumber distribution facility which is located at the end of the line in Ellettsville. According to CSXT, Wickes received only 13 carloads of lumber by rail in 1995, and only 6 carloads of lumber in 1996. CSXT states that Wickes uses both truck and rail transportation to receive its inbound lumber shipments, but truck transportation exclusively for outbound shipments. Following abandonment of the line, CSXT asserts that Wickes can continue to use motor carrier service and for the small volume of inbound lumber now moving by rail, Wickes can use CSXT's team track facility at Hunters, which is approximately 5 highway miles from Wickes' facility at Ellettsville.

CSXT states that the line is very expensive to maintain because, in addition to normal maintenance, there are four public paved crossings on the line totaling 172 feet. One of the crossings has warning signal devices that are costly to maintain. There are also five private crossings and one unpaved public crossing that must be maintained. CSXT submits that the small volume of traffic generated on this line does not justify these continued expenditures.

CSXT also states that the vast majority of the line contains relay quality 112-pound-welded rail and relay quality 115-pound-jointed rail. This relay quality rail is worth approximately \$218,000 and, according to CSXT, can be used more productively at other locations on its rail system. CSXT indicates that it has discussed this abandonment with Wickes, which advised that its use of rail transportation is unlikely to increase substantially in the future. CSXT certified that a copy of the petition was served on Wickes.

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.

¹ Notice of the filing was served and published in the Federal Register on June 23, 1997 (62 FR 33949).

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 high costs of maintaining the line, which is being used minimally by only one shipper, and allow CSXT's assets to be used 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 transaction is not necessary to protect shippers from an abuse of market power. The sole shipper on the line makes substantial use of other transportation alternatives readily available to it and can use CSXT's team track facility if it desires for inbound shipments.² Nevertheless, to ensure that the shipper is informed of our decision, we will require CSXT to serve a copy of this decision on Wickes within 5 days of the service date of this decision and certify to us that it has done so.

UTU requests the imposition of labor protective conditions. 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 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 August 1, 1997, recommending that no environmental or historic conditions be imposed. No comments to the EA were filed by the September 1, 1997 due date. 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 the conservation of energy resources.

SEA states that following the line's abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. INDOT has requested imposition of a 180-day public use condition to give the Indiana Transportation Corridor Planning Board, the state board charged with review of state action related to railroad abandonments, time to review the opportunities for state action related to the proposed abandonment and INDOT time to reach an agreement with CSXT, if it is determined to be in the public's interest.

INDOT has met the criteria for imposing a public use condition as set forth 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 of the period of time requested. Accordingly, a 180-day public use condition will be imposed. We note that a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes.

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 of the above-described line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); and (2) the condition that CSXT leave intact all of the right-of-way underlying track, including bridges, trestles, culverts, and tunnels (but not track or track materials), for a period of 180 days from the effective

² Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

date of this decision, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use.

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

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)³ to allow rail service to continue must be received by the railroad and the Board by September 29, 1997, 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 \$900 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 October 19, 1997. Petitions to stay must be filed by October 6, 1997, and petitions to reopen must be filed by October 14, 1997.

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 September 19, 1998, 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 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

³ 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).