

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 537X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--  
IN ALACHUA COUNTY, FL

Decided: April 15, 1997

By petition filed on January 2, 1997, 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 2.87-mile portion of its Jacksonville Service Lane, Deerhaven Subdivision, extending between milepost 738.65 at 23rd Avenue, N.W., in Gainesville and milepost 741.52 at the end of the track, in Alachua County, FL. The United Transportation Union (UTU) requests imposition of labor protective conditions. A request for issuance of a notice of interim trail use/rail banking (NITU) and imposition of a public use condition was filed by the City of Gainesville. We will grant the petition, subject to labor protective conditions, a trail use condition, and a public use condition.

BACKGROUND

The line of railroad proposed for abandonment passes through downtown Gainesville. It has 22 road crossings. According to CSXT, these crossings are heavily traveled and most are in poor condition. Moreover, the city has asked CSXT to repair the crossings as part of its urban improvement program. CSXT estimates that 17 of the 22 crossings within the city limits of Gainesville would need rehabilitation at a cost of approximately \$300,000.

In recent years, CSXT states that only two rail patrons have shipped or received freight over the line. Gulfside Supply, Inc., a building supply company, received shipments of shingles totaling 55 carloads in 1994 and 27 carloads in 1995. According to CSXT, Gulfside ceased using its service in November 1995 and has used truck transportation exclusively since that time. Should Gulfside require rail service in the future, CSXT asserts that its team track facilities in Gainesville could be utilized.

The second patron, Florida Rock Industries, operates a ready-mix concrete and concrete block plant. CSXT asserts that all outbound traffic is presently transported by truck. Florida Rock received shipments of aggregates (gravel and cinders) totaling 6 carloads in 1994, 40 carloads in 1995, and 25 carloads through November 1996. Because Florida Rock will continue to receive CSXT rail service at another location, that shipper states that it has no objection to the proposed abandonment. CSXT certified that a copy of the petition was served on both shippers. No one has objected to the proposed abandonment.

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 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 application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. By allowing CSXT to avoid maintaining and operating this low-volume line and to apply its assets more productively elsewhere on its system, an exemption will promote safe and efficient rail transportation, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Gulfside is already using motor carriers for its transportation needs and has other rail transportation alternatives available via CSXT's team track facilities. The other shipper on the line, Florida Rock, will continue to have rail service via CSXT at another location and has stated that it does not oppose the abandonment. Thus, we find that regulation is not necessary to protect the shippers from an abuse of market power. Nevertheless, to ensure that the shippers are informed of our action, we will require CSXT to serve a copy of this decision on them within 5 days of the service date of this decision and 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 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 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 March 7, 1997, recommending that no environmental or historic conditions be imposed on the abandonment. No comments have been received 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.

Trail Use. Gainesville requests issuance of an NITU under the National Trails System Act, 16 U.S.C. 1247(d), for the entire 2.87-mile line proposed for abandonment. Gainesville has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to future reactivation for rail service in compliance with 49 CFR 1152.29. By letter dated March 31, 1997, CSXT advises that it is willing to negotiate with Gainesville for interim trail use.

While a request for interim trail use need not be filed until 10 days after the date the notice of exemption is published in the *Federal Register* [49 CFR 1152.29(b)(2)], the provisions of the Trails Act are applicable, and all of the criteria for imposing trail use/rail banking have been met. In light of CSXT's willingness to enter into negotiations, an NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If a mutually acceptable final agreement is reached, further Board approval is not necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, provided the conditions imposed in this proceeding are met. *See* 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

Our issuance of this NITU does not preclude other parties from filing interim trail use requests within 10 days after publication of the notice of this exemption in the *Federal Register*. Nor does it preclude CSXT from negotiating with other parties in addition to Gainesville during the NITU period. If, within the 10-day period following publication of the notice of this exemption, additional trail use requests are filed, CSXT is directed to respond to them.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in *Rail Abandonments--Use of Rights-of-Ways as Trails*, 2 I.C.C.2d 591 (1986) (*Trails*), 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.<sup>1</sup> Accordingly, if a formal

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<sup>1</sup> The statement in *Trails* that section 10905 does not apply to abandonment or discontinuance exemptions has since been superseded by adoption of rules allowing for the use of OFAs in exemption proceedings. *See* 49 CFR 1152.27.

expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this decision and notice will be postponed 10 days beyond the effective date indicated here. In addition, the effective date may be further postponed at later stages in the OFA process. *See* 49 CFR 1152.27(e)(2) and (f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

Public Use. SEA has indicated in its EA that the right-of-way may be suitable for other public use after abandonment. Gainesville also requests imposition of a 180-day public use condition precluding CSXT from disposing of structures (e.g., bridges, trestles, culverts, and tunnels, but not tracks, ties, and signal equipment) on the right-of-way that are suitable for trail use. Gainesville submits that 180 days are required for it to commence negotiations with the carrier and to obtain City Commission approval.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. 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. *See Trails*, 2 I.C.C.2d at 609. Gainesville 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 also will be imposed. 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, but rather to provide an opportunity for any interested person to acquire a 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 Gainesville but may engage in negotiations with other interested persons.

*It is ordered:*

1. The requests for interim trail use/rail banking under 16 U.S.C. 1247(d) and for a public use condition under 49 U.S.C. 10905 are accepted.
2. 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 2.87-mile rail line, subject to: (1) the employee protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979); (2) the condition that CSXT leave intact all of the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels (but not track or track materials), for a period of 180 days from the effective 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; and (3) the requirement that CSXT comply with the terms and conditions for implementing interim trail use/rail banking, as set forth below. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period noted above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line segment.
3. Subject to the conditions set forth above, CSXT may discontinue service and salvage track and track materials consistent with interim trail use/rail banking after the effective date of this decision and notice.
4. 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.
5. 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.

6. 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.

7. 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 in this proceeding are met.

8. Notice will be published in the *Federal Register* on April 22, 1997.

9. CSXT is directed to serve a copy of this decision on each of the shippers located on the line within 5 days after this decision is served and to certify to the Board that it has done so.

10. This exemption will be effective on May 22, 1997, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed.

11. Formal expressions of intent to file an OFA<sup>2</sup> under 49 CFR 1152.27(c)(2) and additional requests for interim trail use/rail banking must be filed by May 2, 1997; petitions to stay must be filed by May 7, 1997; and petitions to reopen must be filed by May 19, 1997.

12. If a formal expression of intent to file an OFA has been timely submitted, an OFA to allow rail service to continue must be received by the railroad and the Board within 30 days after publication, subject to time extensions authorized under 49 CFR 1152.27(c)(2)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2). Each OFA must be accompanied by the filing fee, which currently is set at \$900. *See* 49 CFR 1002.2(f)(25).

13. 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.**"

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

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<sup>2</sup> *See Exempt. of Rail Abandonment--Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), for regulations in effect at the time of filing of the exemption petition. We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued final rules in *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), that became effective on January 23, 1997. Because we have processed the exemption petition under the former regulations, we will continue to use the former regulations in this proceeding to process an OFA, if one is filed.