

SERVICE DATE - AUGUST 29, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 545X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--  
IN CLARKE COUNTY, GA

Decided: August 28, 1997

By petition filed on May 12, 1997,<sup>1</sup> 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 .44-mile portion of its railroad line known as the Abbeville Subdivision, extending from milepost YYA-37.44 to milepost YYA-37.00 at the end of the track in East Athens, Clarke County, GA.<sup>2</sup> The United Transportation Union seeks imposition of labor protective conditions. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

IMC Vigoro (IMC), the only shipper on the line, operates an agricultural supply company located at the end of the track in East Athens. According to CSXT, IMC received 148 carloads of fertilizer in 1995, and 161 carloads of fertilizer in 1996.

At the time the petition for exemption was filed, IMC had indicated to CSXT that it hoped to significantly increase its rail usage at its East Athens facility and expand its industrial trackage at the facility. Accordingly, CSXT and IMC agreed that, following abandonment of the line, CSXT would sell the line to IMC. It was IMC's intention to maintain the line as industrial siding. In a letter filed on July 28, 1997, however, CSXT states that IMC now plans to close its facility in East Athens in the near future and no longer has a need to acquire the line proposed for abandonment. If the exemption is granted, CSXT indicates that it will continue to operate the line until December 31, 1997, or until the date on which IMC closes its facility at East Athens, whichever comes first.

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 an abandonment application, 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 [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 as the sole shipper on the line intends to close its facility in the near future and CSXT has

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on May 30, 1997 (62 FR 29391).

<sup>2</sup> The Abbeville Subdivision, part of CSXT's Atlanta Service Lane, is a 2.34-mile "branch main line" extending between Athens and East Athens, GA.

committed to continued operations through the end of the year.<sup>3</sup> Nevertheless, to ensure that the shipper is informed of our action, we will require CSXT to serve a copy of this decision on IMC 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 July 17, 1997, recommending that no environmental or historic conditions be imposed on the abandonment. No comments to the EA were filed by the August 11, 1997 due date. 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. SEA states that following the line's abandonment, the right-of-way may be appropriate for other public uses under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

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 the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

2. CSXT must serve a copy of this decision on IMC 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)<sup>4</sup> to allow rail service to continue must be received by the railroad and the Board by September 8, 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 September 28, 1997. Petitions to stay must be filed by September 15, 1997, and petitions to reopen must be filed by September 23, 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 August 29, 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

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<sup>3</sup> Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

1 <sup>4</sup> See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49  
2 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

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