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SERVICE DATE - AUGUST 25, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 573X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN MIDLAND COUNTY, MI

Decided: August 23, 1999

On May 7, 1999, CSX Transportation, Inc. (CSXT) filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an approximately 1.85-mile portion of its Detroit Service Lane, Dean Subdivision, between milepost CB-17.37 and milepost CB-19.22, in Midland, Midland County, MI. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (64 FR 28868) on May 27, 1999, instituting an exemption proceeding. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

CSXT presently operates, as part of its Detroit Service Lane, the Dean Subdivision, an 18.5-mile branch main line between Mershon and Midland, MI. CSXT proposes to abandon the terminal 1.85 miles of the Dean Subdivision, which passes through the center of the CSXT Dean Yard in Midland and terminates at the end of the yard. Petitioner states that Dean Yard is surrounded on both sides by Dow Chemical Company (Dow Chemical), and that the primary purpose of the yard is to switch traffic for that shipper. According to CSXT, for many years Dow Chemical has expressed an interest in acquiring the yard and performing its own switching operations. CSXT states that it has no intention of physically removing the trackage. Upon receiving abandonment authority, the petitioner says it intends to reclassify the track as yard track and either lease the track to Dow Chemical or use the track itself for continued rail purposes.

CSXT states that there are several other patrons who ship or receive rail shipments via trackage in Dean Yard: (1) Dow Corning Corporation (Dow Corning), located north of Dean Yard, which ships and receives carloads of chemicals and silicon metals;¹ (2) Matlack, Inc. (Matlack) which runs a TransFlo facility off the rip track² in Dean Yard and receives and distributes

¹ CSXT states that, in order to access Dow Corning, it has historically run through Dean Yard to a track which branches off the yard.

² A rip track is a track designated in a yard for the performance of light repairs to rolling stock.

bulk shipments of plastics; and (3) the Michigan National Guard (Guard) which has used the Pig ramp in the yard to ship and receive infrequent shipments of military equipment.³

Petitioner states that it has made arrangements with Dow Chemical to provide access to the trackage for itself and any other party who wishes to receive shipments at the Pig ramp. Service to the shippers will therefore continue. CSXT adds that Dow Chemical will continue to ship and receive its traffic at Dean Yard, but will perform its own switching operations. Finally, CSXT states that, if for any reason the proposed lease of Dean Yard to Dow Chemical should not materialize, it will not physically remove the line but will simply reclassify it as yard track which will become an integral part of Dean Yard.

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 of the costs of owning and maintaining the line and allowing it to apply its assets more 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 as rail service to shippers will not be harmed by the proposed abandonment and subsequent lease of Dean Yard to Dow Chemical. Nevertheless, to ensure that all parties are informed of our action, we will require CSXT to serve a copy of this decision on Dow Chemical, Dow Corning, Matlack, and the Guard 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 abandonment is limited in scope.

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 set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

³ CSXT points out, however, that the Guard has not received shipments since 1995.

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 9, 1999, recommending that no environmental 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 the conservation of energy resources.

Although SEA has indicated that the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.⁴

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

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 set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

2. CSXT must serve a copy of this decision on Dow Chemical Company, Dow Corning Corporation, Matlack, Inc., and the Michigan National Guard 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)⁵ to allow rail service to continue must be received by the railroad and the Board by September 7, 1999, 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.”**

⁴ 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 June 16, 1999.

⁵ 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).

5. Provided no OFA has been received, this exemption will be effective on September 24, 1999. Petitions to stay must be filed by September 9, 1999, and petitions to reopen must be filed by September 20, 1999.

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 25, 2000, 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, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary