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SERVICE DATE - SEPTEMBER 10, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 568X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN FRANKLIN COUNTY, PA

Decided: September 5, 2001

By decision and notice of interim trail use or abandonment (NITU) served on March 9, 1999, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by CSX Transportation, Inc. (CSXT), of a 1.9-mile portion of its line of railroad known as the Baltimore Service Lane, Lurgan Subdivision (line), extending between milepost BAV-20.5 at 4th Street and milepost BAV-22.4 at Commerce Street in Chambersburg, Franklin County, PA, subject to public use, trail use, and standard employee protective conditions.

On March 12, 1999, Frederick A. Fox, Kaye A. Fox, Frederick Armstrong Fox, and Karla M. Fox (the offerors) timely filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase a portion of the line extending from Valuation Station 1096+20 (including that portion of the line that crosses Main Street) to Valuation Station 1122+30 (not including that portion of the line that crosses South Street) for \$54,572.00. By a decision served March 23, 1999, the offerors were found to be financially responsible, and the effective date of the decision authorizing abandonment on that portion of the line was postponed to permit the OFA process to proceed. In a decision served May 7, 1999, the offerors were authorized to acquire that portion of the line, and the petition for exemption as to that portion of the line was dismissed effective on the consummation date of the sale.

In a letter filed on February 22, 2001, the offerors sought to withdraw their OFA after CSXT informed the offerors that CSXT planned to remove track materials from 4th Street to Main Street. CSXT's proposed action would have left the offerors with an isolated railroad (i.e., with no connection to the national rail system). On March 16, 2001, CSXT filed a letter stating that it had no objections to the withdrawal request. Accordingly, in a decision served on March 30, 2001, the OFA process was terminated, and the decisions served on March 23 and May 7, 1999, were vacated, thereby reinstating the trail use process for the portion of the line formerly subject to the OFA.<sup>1</sup>

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<sup>1</sup> The March 9, 2001 decision authorized the Borough of Chambersburg (the Borough) to negotiate an interim trail use agreement with CSXT.

On July 5, 2001, CSXT informed the offerors that the track from 4th Street to Main Street would remain in place. Based on the changed circumstances, the offerors, in a letter filed on July 24, 2001, have requested that the Board reinstate their OFA. The offerors indicate that CSXT remains willing to complete the OFA process.

In a separate but related matter, CSXT filed, on August 6, 2001, a request to extend, until December 31, 2001, the time to consummate the abandonment and to file its notice of consummation.<sup>2</sup> CSXT also requested that the trail use negotiating period be extended to the same date.<sup>3</sup> CSXT states that more time is necessary because the transfer of property pursuant to the NITU has not been accomplished.

### DISCUSSION AND CONCLUSIONS

Reinstatement of Offerors' OFA. The offerors' request for reinstatement of the OFA will be granted. Ordinarily, an OFA must be filed within 10 days of the decision authorizing or exempting the abandonment. The offerors met this deadline, but their subsequent withdrawal created a time lapse not provided for in the Board's abandonment regulations. The strict time frames imposed by the Board for OFAs are derived from statutory deadlines. These deadlines reflect Congressional intent to ensure that rail carriers are not burdened with unprofitable lines for longer than necessary. In this case, however, the effective date of the exemption for abandonment of the whole line, including the section subject to the OFA, has been postponed as a result of the continued negotiations for trail use with the Borough.<sup>4</sup> Moreover, CSXT has indicated to the offerors that it is willing to sell the portion of its line from Main Street to South Street to the offerors in accordance with the terms of the original OFA. Thus, under the unique circumstances of this case, CSXT will not be burdened by the reinstatement of the OFA.

CSXT's Request for an Extension. CSXT has shown good cause to extend the time to consummate the abandonment and to file a notice of consummation in this proceeding. Also, because CSXT is willing to continue negotiating, the trail use negotiating period may be

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<sup>2</sup> CSXT's prior requests for extensions of time to exercise abandonment authority were granted by decisions served on March 22, 2000, January 8, 2001, March 30, 2001, and June 19, 2001.

<sup>3</sup> CSXT's prior requests to extend the NITU negotiating period were granted by decisions served on January 8, 2001, March 30, 2001, and June 19, 2001.

<sup>4</sup> The reinstatement of the OFA will leave the Borough in no different a position than it would have been had the timely filed OFA not been withdrawn.

extended as well.<sup>5</sup> Accordingly, the abandonment consummation date and the trail use negotiating period will be extended to December 31, 2001.

The operation of trail use and public use procedures can be postponed or even foreclosed, by the OFA process under 49 U.S.C. 10904 because an OFA to acquire rail lines for continued rail service takes priority over trail use and public use. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986). Accordingly, the trail use procedure is postponed to the extent it addresses the portion of the line subject to the reinstated OFA.

It is ordered:

1. The OFA is reinstated. Under 49 U.S.C. 10904, the offerors are authorized to acquire that portion of the line from Valuation Station 1096+20 (including that portion of the line that crosses Main Street) to Valuation Station 1122+30 (not including that portion of the line that crosses South Street).
2. Under 49 U.S.C. 10904 and 49 CFR 1152.27(f)(2), the petition for exemption for that portion of the above-described line is dismissed effective on the date the sale is consummated.
3. CSXT's request for an extension of time to exercise the abandonment authority and its request to extend the NITU negotiating period, are granted.
4. The authority to abandon must be exercised by December 31, 2001.
5. The negotiating period under the NITU is extended until December 31, 2001.
6. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>5</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152 (1987).