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SERVICE DATE - JULY 16, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 566X)

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

Decided: July 14, 1999

By petition filed March 29, 1999, 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 portion of its Jacksonville Service Lane, Kingsland Subdivision, extending from milepost S-634.85 at Acorn Street to milepost S-635.09 at the connection of the line to be abandoned with CSXT's former Jacksonville-Savannah main line, a distance of 0.24-miles, in Jacksonville, Duval County, FL. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (64 FR 18967) on April 16, 1999, instituting an exemption proceeding. The United Transportation Union (UTU) requests imposition of employee protective conditions. We will grant the exemption, subject to standard employee protective conditions and an environmental condition.

BACKGROUND

CSXT states that the line proposed for abandonment is located just south of, and in fact parallels, the Beaver Street Viaduct in Jacksonville. CSXT adds that the viaduct is an integral part of Highway U.S. 90 which is an extremely highly traveled east-west road through Jacksonville. According to CSXT, the Florida Department of Transportation has indicated that the viaduct must be replaced within the next 2 years, and that this public project cannot be progressed until the line involved in this proceeding is abandoned. CSXT avers that the property surrounding this trackage will be required by the State as a construction staging area or as a retention pond. CSXT states that, because of the importance of this project to the Jacksonville area, petitioner has agreed to cooperate with the State and seek abandonment of the line.

CSXT claims that in recent years only one shipper, Smurfit Recycling Company (Smurfit),¹

¹ According to CSXT, there is a second shipper on the line -- National Wire, S.E., Inc. (National Wire) located at Church Street. CSXT claims that National Wire's property was previously owned by Florida Machine & Foundry, which ceased operations over 7 years ago. CSXT asserts that the property was purchased by National Wire and, in the 7 plus years that National Wire has owned the facility, that shipper has never made use of rail service. According to CSXT, the abandonment will have no adverse effect on this company.

has used the line to ship or receive freight. Smurfit ships scrap paper from its facility at West Beaver Street via rail. According to CSXT, Smurfit shipped 7 carloads in 1996, 5 carloads in 1997, and 10 carloads in 1998. CSXT further claims that Smurfit has been offered alternative rail service through the use of petitioner's Honeymoon Yard team track facility located approximately one mile from Smurfit's Beaver Street facility. CSXT adds that, in the event that Smurfit elects not to utilize CSXT's team track, truck transportation is a viable option. CSXT contends that Smurfit is, in fact, already making extensive use of truck service.

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 a minimally used rail 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. The record indicates that Smurfit, the only rail shipper on the line, will continue to have access to rail as well as truck transportation.² Nevertheless, to ensure that all shippers on the line are informed of our action, we will require CSXT to serve a copy of this decision on Smurfit and National Wire within 5 days of the service date of this decision and to certify to us that it has done so.

UTU requests the imposition of employee 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

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

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 the data it contains, and analyzed the probable effect of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on May 28, 1999.

In the EA, SEA indicated that the Florida Department of Environmental Protection (FDEP) has expressed concern about potential contamination of the upper layer of the ballast on the line. Accordingly, SEA recommended that a condition be imposed on any decision granting abandonment authority as follows: "CSXT shall consult with the FDEP regarding the potential contamination of the upper layer of the ballast. The site should conform to the Soil Cleanup Goals for Florida and any contaminated soils must be disposed of in a manner that is consistent with the State of Florida requirements. In the event that any remediation is necessary, CSXT shall develop a remediation work plan and not dispose of the upper layer of the ballast until the remediation of the contamination is complete. Also, CSXT shall advise SEA of the results of its consultations and provide SEA with a copy of the FDEP approved mitigation plan."

On June 28, 1999, CSXT filed a comment in response to the EA. Therein, CSXT asserted that it reached an understanding with the FDEP at a June 22, 1999 meeting which should result in a modification of SEA's proposed environmental condition. However, SEA states that it has received nothing from the FDEP supporting CSXT's claims in this regard. Accordingly, SEA has recommended that the condition set forth in the EA be imposed without modification.

We will impose the condition recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, 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 public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.³

This decision 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 by CSXT of the above-described line, subject: (1) to the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); and (2) the condition that (a) CSXT shall consult with the FDEP regarding the potential contamination of the upper layer of the ballast, (b) the site should conform to the Soil Cleanup Goals for Florida and any contaminated soils must be disposed of in a manner that is consistent with the

³ 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 May 6, 1999.

State of Florida requirements, (c) in the event any remediation is necessary, CSXT shall develop a remediation work plan and not dispose of the upper layer of the ballast until the remediation of the contamination is complete, and (d) CSXT shall advise SEA of the results of its consultations and provide SEA with a copy of the FDEP approved mitigation plan.

2. CSXT must serve a copy of this decision on Smurfit and National Wire 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)⁴ to allow rail service to continue must be received by the railroad and the Board by July 26, 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 the filing fee, which currently is set at \$1,000. See 49 FR 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 August 15, 1999. Petitions to stay must be filed by August 2, 1999, and petitions to reopen must be filed by August 10, 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 16, 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 no 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

⁴ 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).