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SERVICE DATE - JULY 23, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 569X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--IN GUERNSEY AND  
NOBLE COUNTIES, OH

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: July 22, 1999

By decision served on June 4, 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 portion of its Louisville Service Lane, Central Ohio Subdivision, extending from milepost 4.9 near Byesville to milepost 18.23 at the end of the track near Cumberland, a distance of 13.3 miles, in Guernsey and Noble Counties, OH. The exemption was scheduled to become effective on July 4, 1999, unless stayed by the Board or unless a formal offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) was filed by June 14, 1999.

On June 14, 1999, the Cambridge-Guernsey County Community Improvement Corporation (CIC) filed a letter notifying the Board that it intended to file an OFA to purchase 3.6 miles of the line between milepost 4.9 and milepost 8.5 in Derwent. CIC stated that it would submit an OFA after it had time to review the net liquidation value (NLV) appraisal documents. CIC also stated that CSXT had provided an NLV of \$98,000, but did not include any underlying materials to support this figure, and has agreed to sell the line segment for \$93,000. Because the Board's revised regulations<sup>1</sup> no longer provide for a notice of intent to file an OFA in proceedings involving petitions for abandonment exemptions, CIC's letter was treated as a late-filed petition to toll the time period for filing an OFA. By decision served on June 24, 1999, the time period for filing an OFA in this proceeding for the 3.6-mile line segment was tolled until July 14, 1999, and the effective date of the abandonment exemption as to that segment was postponed until July 24, 1999.<sup>2</sup>

On July 19, 1999, CIC late-filed an OFA to purchase the 3.6-mile line segment between milepost 4.9 and milepost 8.5 for \$93,000. The deadlines in 49 U.S.C. 10904 and 49 CFR 1152.27 are aimed at limiting a rail carrier's losses resulting from continued operation of a line that has been

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<sup>1</sup> 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).

<sup>2</sup> The abandonment exemption for the remainder of the line between milepost 8.5 and milepost 18.23 became effective on July 4, 1999.

authorized for abandonment. Here, the effective date of the 3.6-mile line segment has already been postponed. Because CSXT has raised no objection to the extension and will not be prejudiced by the acceptance of CIC's late-filed OFA, it will be accepted.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). CIC states that the Ohio Rail Development Commission (ORDC) will provide the funding for the acquisition of the 3.6-mile line segment and CIC submitted a copy of a letter, dated May 19, 1999, that it received from ORDC to that effect. The information submitted is sufficient to demonstrate that CIC is financially responsible.

Because CIC, a financially responsible entity, has offered financial assistance, the effective date of the abandonment exemption as to the segment of the line between milepost 4.9 and milepost 8.5 will be postponed, pending completion of the OFA process.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$14,800. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of the proceeding, along with the words "Attention: Application Unit, Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

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

It is ordered:

1. CIC's late-filed OFA is accepted.
2. The effective date of the exemption authorizing the abandonment of the line segment from milepost 4.9 to milepost 8.5 is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
3. If CSXT and CIC cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before August 18, 1999. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption for the 3.6-mile line segment to become effective.
4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary