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SERVICE DATE – JULY 25, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 633X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN GENESEE COUNTY,  
MI

Decided: July 23, 2007

By petition filed on April 6, 2007, 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 1.78-mile line of railroad in its Northern Region, Chicago Division, Saginaw Subdivision, extending from Valuation Station 9195+50 to Valuation Station 9289+36, known as the Old Mainline in Atwood Yard, in the cities of Flint and Burton, in Genesee County, MI. CSXT also seeks to be exempted from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904. Notice of the filing was served and published in the Federal Register on April 26, 2007 (72 FR 12962). We will grant the petition for exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

According to CSXT, it has used the line for at least the last 5 years solely to serve Clean Harbors Environmental Services (Clean Harbors), formerly known as Safety Kleen Industries, located near the beginning of the line at Valuation Station 9289+36. Clean Harbors has expressed interest in acquiring and maintaining a portion of the line so it can switch and store its cars within its facility, and it has executed a letter of non-opposition to the proposed abandonment (Attachment 3 to Exhibit B). CSXT does not expect any rail oriented business to develop on the line. CSXT points out that there is no overhead traffic on the line and that there is no demand for service on the line, other than from Clean Harbors. CSXT states that it has not been advised of any opposition to the proposed abandonment. CSXT indicates that it seeks to abandon the line for purposes of reclassifying it as excepted track so that CSXT can sell or lease the line to Clean Harbors to use for switching and storing its cars within its facility without the shipper incurring a common carrier obligation. CSXT concludes that, because the line is no longer needed for common carrier purposes, retention of the line as regulated track is no longer necessary.

## 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 the application process, an exemption will minimize the need for Federal regulatory control over the rail transportation system, and will reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption also will foster sound economic conditions and encourage efficient management by relieving CSXT from the cost of owning and maintaining the line and allowing CSXT 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 adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. The sole shipper on the line does not object to the proposed transaction. There is no overhead traffic on the line, and no demand for service on the line other than from Clean Harbors. Nevertheless, to ensure that Clean Harbors is informed of our action, we will require CSXT to serve a copy of this decision on it within 5 days of the service date of this decision and certify to the Board 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).

CSXT has submitted an environmental and historic 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 June 5, 2007, requesting comments by July 5, 2007. In the EA, SEA recommended that one condition be imposed on any decision granting abandonment authority.

In the EA, SEA states that the National Geodetic Survey (NGS) has identified one geodetic station marker may be affected by the proposed abandonment. Therefore, SEA recommends that CSXT be required to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the one geodetic station marker by NGS.

Comments were filed following issuance of the EA. SEA states in its Post Environmental Assessment (Post EA) that the Genesee County Metropolitan Planning

Commission has indicated interest in acquiring the rail line proposed for abandonment for trail use. The Board, however, has not received an actual request for trail use. SEA concludes in its Post EA that the condition it recommended in the EA be imposed and that no additional conditions are warranted.

Accordingly, we will impose the environmental condition recommended by SEA in the EA. Based on SEA's recommendations, 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.

As previously noted, CSXT has requested that the abandonment be exempted from the OFA provisions of 49 U.S.C. 10904. We have granted exemptions from these provisions from time to time, when appropriate. Here, the sale of the trackage to Clean Harbors would facilitate private rail operations, and no one has expressed interest in continued common carrier service over the line. Indeed, no other shipper has even used the line for more than 5 years. Moreover, the invoking of the OFA procedures could substantially delay or even preclude Clean Harbors' request to acquire the trackage for use in its private rail operations. Accordingly, we will exempt the proposed abandonment from the OFA requirements of 49 U.S.C. 10904.<sup>1</sup>

The evidence of record establishes that the proposed exemption from 49 U.S.C. 10904 meets the criteria of 49 U.S.C. 10502. Applying the OFA provisions in this instance is not necessary to carry out the rail transportation policy. Allowing the abandonment exemption to become effective expeditiously, without first being subject to the OFA provisions, will minimize the need for Federal regulatory control over the rail transportation system, expedite the regulatory decision, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. And it has already been determined that regulation is not necessary to protect shippers from an abuse of market power.<sup>2</sup>

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. 10903-04 the abandonment by CSXT 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.

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<sup>1</sup> See The Cincinnati, New Orleans and Texas Pacific Railway Company–Abandonment Exemption–In Cumberland and Roane Counties, TN, STB Docket No. AB-290 (Sub-No. 208X) (STB served Nov. 15, 2000) (exemption from OFA and public use requirements granted to facilitate prompt transfer of the line to the shipper).

<sup>2</sup> CSXT has not requested an exemption from the public use provisions of 49 U.S.C. 10905, and we will not grant one. We do note that requests for a public use condition were due May 16, 2007, and none was filed.

91 (1979), and subject to the condition that CSXT shall notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the one geodetic station marker by NGS.

2. CSXT must serve a copy of this decision on Clean Harbors within 5 days of the service date and certify to us that it has done so.

3. This exemption will be effective on August 24, 2007. Petitions to stay must be filed by August 9, 2007, and petitions to reopen must be filed by August 20, 2007.

4. 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 July 25, 2008, 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 Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary