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SERVICE DATE - AUGUST 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 562X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--IN
ROCKY MOUNT, NASH COUNTY, NC

Decided: August 7, 1998

By petition filed on April 23, 1998, 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 Florence Service Lane, North End Subdivision, extending from Valuation Station 4+30 at Falls Road to Valuation Station 36+00 at the end of the track near Earl Street, a distance of 0.60 miles, in Rocky Mount, Nash County, NC. Pursuant to 49 U.S.C. 10502(b), a notice was published in the Federal Register (63 FR 26675) on May 13, 1998, instituting an exemption proceeding. The United Transportation Union requests imposition of labor protective conditions. We will grant the exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

According to CSXT, the line proposed for abandonment is in poor condition and is constructed of obsolete 85-pound jointed rail. CSXT estimates that the cost to replace the track with at least 100-pound rail would be approximately \$51,600. In addition to replacing the track, CSXT states that approximately 1,500 new ties must be installed at a cost of \$40 per tie and a total cost of \$60,000. In addition to the track and ties, CSXT states that there are seven road crossings on the line which are in need of immediate repair. It estimates that it would cost \$90,000 to repair all of the crossings, and submits that, if it is to continue operating in the future, gates and flashing lights should be installed at three of the crossings at a cost of \$100,000 per crossing and a total cost of \$300,000. Although a portion of this cost could be reimbursed through federal funding, CSXT states that it would have to bear the continued maintenance expenses of these signals in the future. CSXT concludes that the total cost to perform the necessary maintenance and signaling work to allow for continued operations on the line is more than \$500,000. CSXT asserts that there is no justification for an expenditure of this magnitude in light of the volume of traffic which has historically originated and terminated on the line.

In recent years, only two rail patrons, Log Cabin Homes (Log Cabin) and New Southern of Rocky Mount (New Southern), have originated or terminated rail traffic on the line. Log Cabin uses

the line as a team track for the delivery of lumber because it does not have a private siding at its place of business.¹ In 1996, it received 6 carloads and in 1997, it received 10 carloads.

New Southern used the line to ship vegetable oil and meal. In 1996, it shipped 16 carloads. Since then, it has not used the line. According to CSXT, New Southern was in bankruptcy prior to 1987 and its operations have consistently decreased since that time. It is CSXT's understanding that Woodland Farms, a company located in Laurinburg, NC, is considering purchasing New Southern through an affiliated company.²

CSXT states that the transportation alternatives available to the two patrons on the line include the use of motor carriers and CSXT's team track in Rocky Mount which is located approximately one-half mile from the line proposed for abandonment. CSXT certified that a copy of the petition was served on Log Cabin, New Southern, and Woodland Farms.

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 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 [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 the abuse of market power because alternative rail and motor transportation is available. Nevertheless, to ensure that Log Cabin and New Southern (and also Woodland Farms) are informed of our action, we will require CSXT to serve a copy of this decision on them within 5 days of the service date of this decision and 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.

¹ By letter filed on May 7, 1998, CSXT states that, since the filing of its petition, it has been informed by Log Cabin that it is interested in purchasing the line.

² CSXT states in its petition that Woodland Farms has indicated an interest in purchasing the line if it acquires New Southern.

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 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, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on July 7, 1998. In the EA, SEA indicated that the State of North Carolina, Department of Environment and Natural Resources (DENR) has stated that any exposed areas within the railroad right-of-way are to be appropriately stabilized prior to abandonment. The DENR also states that areas that may be contributing to off-site sedimentation may be subject to the requirements of the Sedimentation Pollution Control Act of 1973. Therefore, SEA recommends that we impose a condition requiring CSXT, prior to any salvage activities, to consult with DENR to determine if permits are necessary under the provisions of the Sedimentation Pollution Control Act of 1973.

No comments to the EA were filed by the July 31, 1998 due date. 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.

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 to: (a) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); and (b) the condition that CSXT shall, prior to any salvage activities, consult with DENR to determine if permits are necessary under the provisions of the Sedimentation Pollution Control Act of 1973.

2. CSXT is directed to serve a copy of this decision on Log Cabin, New Southern, and Woodland Farms 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) to allow rail service to continue must be received by the railroad and the Board by August 21, 1998, 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 CFR 1002.2(f)(25).

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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 September 10, 1998. Petitions to stay must be filed by August 26, 1998, and petitions to reopen must be filed by September 8, 1998.

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 11, 1999, 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 and Vice Chairman Owen.

Vernon A. Williams
Secretary