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SERVICE DATE – AUGUST 13, 2009

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE

STB Docket No. AB-55 (Sub-No. 694X)

CSX TRANSPORTATION, INC.–
ABANDONMENT EXEMPTION–IN MCMINN COUNTY, TN

Decided: August 12, 2009

By petition filed on May 1, 2009, 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 6.4-mile rail line, known as the Athens Branch, on its Southern Region, Huntington-West Division, KD Subdivision between milepost OKW 327, at Englewood, and milepost OKW 333.4, at Athens, in McMinn County, TN (the line). Notice of the filing was served and published in the Federal Register on May 21, 2009 (74 FR 23926-27). On June 2, 2009, McMinn County, the City of Athens, and the City of Englewood (collectively, Trail Offerors), filed a request for imposition of a public use condition and for issuance of a notice of interim trail use (NITU). We will grant the exemption, subject to trail use, public use, environmental, and standard employee protective conditions.

BACKGROUND

The line is a stub-end branch line to the west of CSXT's KD Subdivision. CSXT states that there has been no rail service over the line since June 27, 2008, when CSXT embargoed the line due to unsafe track conditions. According to CSXT, prior to the embargo, there were 3 shippers on the line: Mayfield Dairy, Seaton Iron & Metal, and Timberland Harvesters, all located in Athens. CSXT states that it has discussed the abandonment with the shippers and believes that the shippers have arranged for alternative transportation. None of the shippers on the line have submitted an opposition to the abandonment.

CSXT seeks to abandon the line to avoid maintenance costs and the opportunity costs associated with continued service. Prior to the June 2008 embargo, CSXT states that the line incurred an avoidable loss in 2007, the last full year of operation, of \$9,940. Due to the reduced levels of traffic on the line prior to the embargo, the investment needed to rehabilitate the line, and the poor prospects for increased business in the future, CSXT states that continued operation of the line would create a burden on CSXT and interstate commerce. CSXT calculates that it would require a rehabilitation expenditure of \$702,516 to return the line to Federal Railroad Administration (FRA) Class 1 standards.

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)]. The line has operated at a loss and would require significant rehabilitation. An exemption, therefore, will promote adequate revenues, foster sound economic conditions, and encourage efficient management by allowing CSXT to avoid losses associated with the cost of owning and maintaining the line [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. All active shippers on the line appear to have begun using alternative transportation for their products due to the embargo on the line and have not filed in opposition to the proposed abandonment. Also, the line is stub-ended with no apparent prospects for future rail traffic. Nevertheless, to ensure that shippers on the line are informed of our action, we will require CSXT to serve a copy of this decision on shippers so that it is received by the shippers within 3 days of the service date of this decision and notice, and to certify contemporaneously to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction 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 of granting the 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 environmental and historic reports 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. The Board's 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 30, 2009.

In the EA, SEA states that comments received from the National Geodetic Survey (NGS) note that 4 geodetic station markers have been identified that may be affected by this proposed abandonment. SEA recommends that a condition be imposed requiring CSXT to notify NGS at

least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic stations markers.

SEA also states in the EA that comments were received from the Mayor of the Town of Englewood. The Mayor expressed concern about the poor condition of road crossings and the maintenance of additional property owned by CSXT along the line. SEA recommends that a condition be imposed requiring CSXT, prior to the commencement of any salvage activities, to consult with the Mayor to address the concerns about the upkeep and maintenance of road crossings and property along the line.

Comments to the EA were due by July 17, 2009. No comments to the EA were received. SEA has recommended no changes to the conditions it previously recommended in the EA. Accordingly, we will impose the conditions 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, the Trail Offerors filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR 1152.29. The Trail Offerors have submitted a statement of willingness to assume financial responsibility for the right-of-way (ROW), and have acknowledged that use of the ROW is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. By letter filed on June 2, 2009, CSXT states that it is willing to negotiate with the Trail Offerors for interim trail use. Because the Trail Offerors' request complies with the requirements of 49 CFR 1152.29, and CSXT is willing to enter into trail use negotiations, we will issue a NITU for the subject line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that, following abandonment and salvage of the line, the ROW may be suitable for other public use. As noted, the Trail Offerors also have filed a request for imposition of a 180-day public use condition under 49 U.S.C. 10905 with the following conditions: (1) prohibiting CSXT from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms; and (2) barring CSXT from removing or destroying trail-related structures such as bridges, trestles, culverts, and tunnels. The Trail Offerors state that the rail corridor has considerable value for recreational use. According to the Trail Offerors, the 180-day period is needed to complete a trail plan and initiate negotiations with CSXT.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d

591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The Trail Offerors have met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the rail line to be abandoned, commencing from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. If a trail use agreement is reached on a portion of the ROW, CSXT must keep the remaining ROW intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with the Trail Offerors, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

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 the abandonment 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. 91 (1979), and the conditions that CSXT shall: (1) be prohibited from disposing of the corridor and removing or destroying trail-related structures such as bridges, trestles, culverts, and tunnels, but not including tracks, ties and signal equipment, for a period of 180 days from the effective date of this decision and notice to enable any State or local government agency, or other interested person, to negotiate the acquisition of the line for public use; (2) comply with the interim trail use/rail banking procedures set forth below; (3) consult with the Mayor of the Town of Englewood regarding maintenance of road crossings and property along the line prior to

commencement of any salvage activities; and (4) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

2. CSXT is directed to serve a copy of this decision and notice on all shippers located on the line so that it is received by the shippers within 3 days from the service date of this decision and notice and to certify contemporaneously to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for the management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice, and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by March 11, 2010, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, provided the conditions imposed above are met. See 49 CFR 1152.29 (d)(1). If an interim trail use/rail banking agreement is executed before March 11, 2010, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

7. An 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 24, 2009, 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 of \$1,500. See 49 CFR 1002.2 (f)(25).

8. 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.”**

9. Provided no OFA has been received, this exemption will be effective on September 12, 2009. Petitions to stay must be filed by August 28, 2009; petitions to reopen must be filed by September 8, 2009.

10. 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 13, 2010, 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, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary