

SERVICE DATE - OCTOBER 14, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 805X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN DAVIDSON
COUNTY, TENN.

Digest:¹ This decision allows CSX Transportation, Inc., to abandon approximately 2,262 feet of rail line in Nashville, Tenn., subject to standard employee protective conditions.

Decided: October 13, 2021

On June 30, 2021, CSX Transportation, Inc. (CSXT), a Class I rail carrier, filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon an approximately 2,262-foot stub-ended rail line that runs between Val Sta. 2403+77 and Val Sta. 2426+39 on its Nashville Division, Nashville Terminal Subdivision, in Davidson County, Tenn. (the Line). Notice of the petition was served and published in the Federal Register on July 20, 2021 (86 Fed. Reg. 38,401). As discussed below, the Board will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

CSXT seeks to abandon the Line because it intends to sell the property on which the Line is located to Monroe Infrastructure, LLC (Monroe). (Pet. 3.) According to CSXT, in the last two years, there were two shippers on the Line, Cherokee Marine Terminals and Kenwal Steel Corporation. (Id.) CSXT states that the property on which both shippers were located has been purchased by Monroe, (id.), and that both shippers have relocated and are no longer located on the Line, (id. at 5). CSXT also states that there are no other customers on the Line. (Id.)

CSXT represents that Monroe intends to redevelop the land adjacent to the Line for non-rail purposes—specifically retail, residential, and office space—and that the City has rezoned the adjacent land for residential and commercial use. (Id. at 4-5.) In addition, Oracle Corporation acquired approximately 65 acres along the Line for its southeast tech campus, which CSXT represents is virtually all of the property adjacent to the Line. (Id.) Thus, CSXT asserts, there are no prospects for future shippers on the Line. (Id. at 5.) Therefore, CSXT seeks to abandon

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

its interest in the Line and sell the property to Monroe to facilitate the redevelopment of the adjacent property. (Id. at 4.)

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. Pursuant to 49 U.S.C. § 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. The record indicates that the last two shippers on the Line have relocated elsewhere, and the Line is stub-ended and therefore cannot support overhead traffic. Moreover, there is no potential for future traffic on the Line due to the mixed-use development of the land surrounding the Line. (Pet. 4-5.) Under these circumstances, granting an exemption would expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling of this proceeding. See 49 U.S.C. § 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected by use of the exemption process here.

Regulation of the proposed abandonment is also not needed to protect shippers from the abuse of market power. As discussed above, there are no shippers on the Line, and there is no prospect of freight rail traffic on the Line in the future.² (Pet. 4-5.)

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose upon CSXT the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Environmental and Historic Review. CSXT submitted a combined 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 environmental impacts of the proposed abandonment. See 49 C.F.R. §§ 1105.7, 1105.8, 1105.11. In its response to information submitted by CSXT, the U.S. Fish and Wildlife Service, Tennessee Ecological Service Field Office stated that there is no critical habitat within the area of proposed abandonment. In addition, the Tennessee Historical Commission submitted comments stating that no historic properties listed, or eligible for listing, in the National Register of Historic Places would be affected within the right-of-way of the proposed abandonment.

² Because the Board finds that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, the Board need not determine whether the proposed abandonment is limited in scope. See 49 U.S.C. § 10502(a).

The Board's Office of Environmental Analysis (OEA) has examined the report submitted by CSXT and verified the data it contains. OEA has also analyzed the potential effects of the proposed action on the quality of the human environment.

In a Draft Environmental Assessment (Draft EA) served on August 27, 2021, OEA concluded that, as proposed, the abandonment of the Line would not significantly affect the quality of the human environment. Comments on the Draft EA were due by September 27, 2021. No comments on the Draft EA were received. In the Final Environmental Assessment, issued on September 30, 2021, OEA did not recommend any environmental or historic preservation conditions.

Based on OEA's recommendation, the Board concludes that the proposed abandonment would not significantly affect either the quality of the human environment or the conservation of energy resources. Therefore, no environmental or historic preservation conditions are required.

Offers of Financial Assistance. Because no formal expressions of intent to file an offer of financial assistance (OFA) were filed by the July 30, 2021 deadline, the Board will not consider OFAs in this case. See 49 C.F.R. § 1152.27(c)(1)(i).

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 CSXT's abandonment of the Line, subject to the employee protective conditions set forth in Oregon Short Line.
2. The exemption will be effective November 13, 2021.
3. Petitions to reopen and petitions to stay must be filed by November 3, 2021.
4. Pursuant to 49 C.F.R. § 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 October 14, 2022, 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 one-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, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.