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SERVICE DATE - SEPTEMBER 5, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 577X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION— IN WAYNE COUNTY, IN

Decided: August 30, 2000

By petition filed on May 22, 2000, 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 1.31-mile portion of rail line extending from railroad Milepost CI-61.90 to railroad Milepost CI-63.21 in Richmond, Wayne County, IN. Notice of the exemption proceeding was published in the Federal Register at 65 FR 37206 on June 13, 2000. We will grant the petition, subject to employee protective conditions.

BACKGROUND

CSXT states that the 1.31-mile line to be abandoned is located at the northern end of its 44-mile Richmond Subdivision branch line, which runs in a north-south direction between Richmond and Fernald, IN. The northern end terminates at a Norfolk Southern Railway Company (NS) rail line which runs in an east-west direction through Richmond. CSXT states that no rail customers are located on the 1.31-mile portion. The line is used, however, for overhead traffic destined to three rail patrons located on NS's line in Richmond: Johns Manville International Inc. (Manville), Primex Plastics (Primex) and Belden Manufacturing (Belden). Traffic for these patrons had been interchanged with NS on a connecting track located at the northern end of the 1.31-mile portion and was switched to the patrons by NS.

According to CSXT, Manville received 67 carloads of industrial sand and soda ash from CSXT in 1997, 372 carloads in 1998, and 69 carloads in 1999. Primex received one carload of plastic in 1997, 24 carloads in 1998, and 44 carloads in 1999. Belden received no carloads in 1997 or 1998, and three carloads of plastic in 1999.

CSXT claims that it agreed with NS several months ago to interchange traffic for these three rail patrons at Muncie, IN, rather than at Richmond. CSXT states that these patrons will continue to receive the same rail service after abandonment. CSXT representatives apparently have discussed the alternative interchange arrangements with each patron, and each was served with a copy of CSXT's petition.

CSXT also states that abandonment would accommodate plans of the Indiana Department of Transportation (IDOT) to reroute U.S. Highway 40 through Richmond to improve traffic flow.

According to CSXT, if the line remains in place, the rerouted highway would cross it in Richmond. In that event, IDOT would have to build a grade crossing in downtown Richmond on a busy highway. CSXT states that a grade crossing would be expensive to build and would increase safety concerns in Richmond.

In a comment filed on June 12, 2000, Manville states that it is concerned that the alternative interchange at Muncie would be temporary. Manville notes that CSXT and NS had not yet signed an agreement to make the interchange permanent. Manville also expresses concern that the agreement might allow one carrier to increase switching charges, thereby making interchange cost-prohibitive and eliminating competition.

In a letter dated June 16, 2000, CSXT responded that it entered into a permanent Interchange Substitution Agreement with NS on May 3, 2000, and that the agreement was made effective as of February 23, 2000. According to CSXT, the agreement provides that cars destined for Richmond would be interchanged at Muncie, and that the arrangement will continue indefinitely, until terminated by the mutual consent of CSXT and NS. CSXT further points out that the agreement does not allow one party to escalate switching charges to a cost-prohibitive level.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board 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 an 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 time and expense of the abandonment 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 and allowing it to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(3), (5), and (9)]. An exemption will also eliminate the need for a grade crossing, with its inherent safety problems, on the new U.S. Highway 40 through Richmond. Other aspects of the rail transportation policy will not be adversely affected.

We find that regulation is not necessary to protect shippers from an abuse of market power. The three patrons who currently receive traffic that had moved on CSXT's line will continue to receive rail service on NS's line in Richmond. CSXT and NS have already implemented a permanent arrangement to interchange cars routed to Richmond at Muncie. Each patron has been served with a copy of the petition. Manville is the only patron that has raised concerns about the proposed abandonment, but CSXT has allayed Manville's concerns in its

response. In light of 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 the statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

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 its data, and analyzed the probable effect of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on July 21, 2000, recommending that no environmental or historic conditions be imposed on the abandonment. No comments were filed in response to the EA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources. Although SEA has indicated that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.¹

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 1.31-mile rail line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

2. CSXT must serve a copy of this decision on Manville, Primex, and Belden 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)² to allow rail service to continue must be received by the railroad and the Board by September 15, 2000, 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 a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

¹ Public use requests were due no later than 20 days after publication of notice of the petition for exemption in the Federal Register, or by July 3, 2000.

² 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).

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 on October 5, 2000. Petitions to stay must be filed by September 20, 2000. Petitions to reopen must be filed by October 2, 2000.

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 September 5, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary