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SERVICE DATE - JUNE 18, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 571X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN SAGINAW COUNTY, MI

Decided: June 17, 1999

On March 1, 1999, CSX Transportation, Inc. (CSXT) filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an approximately 2.29-mile portion of its Detroit Service Lane, Dean Subdivision, between milepost CBE-7.80 and milepost CBE-10.09, in Paines, Saginaw County, MI. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (64 FR 13629-30) on March 19, 1999, instituting an exemption proceeding. The United Transportation Union seeks imposition of labor protective conditions. We will grant the exemption, subject to standard employee protective conditions and an environmental condition.

BACKGROUND

CSXT states that the line proposed to be abandoned is an island operation located between Central Michigan Railway Company (CMGN) to the east and Mid-Michigan Railroad, Inc. (MMRR) to the west. CSXT avers that, in order to access this line, it must operate over CMGN's trackage between Saginaw and Paines. According to CSXT, there are no rail patrons located on the line, and the line is now used exclusively for the interchange of traffic between it and MMRR.

CSXT asserts that, after abandonment is authorized by the Board, it proposes to sell the entire line segment to MMRR under the Board's offer of financial assistance (OFA) procedures for continued rail use. After MMRR acquires the line, interchange between CSXT and MMRR will take place at CSXT's Saginaw Yard, which is approximately 8 miles from Paines. According to CSXT, interchange between the parties will be more efficient at the Saginaw Yard than under current arrangements. CSXT avers that, if for some reason MMRR does not acquire the line, petitioner will not consummate the abandonment and will let its abandonment authority lapse.

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 an abandonment application, 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 system. [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 an abuse of market power. There are no rail patrons located on the line proposed for abandonment, and the line is used only for the interchange of traffic between CSXT and MMRR. 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 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, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on April 30, 1999.

In the EA, SEA indicated that the U.S. Army Corps of Engineers recommends that CSXT contact the Corps' Michigan office to determine whether the proposed abandonment requires authorization under section 404 of the Federal Clean Water Act. SEA, therefore, recommended that the following condition be imposed on any decision granting abandonment authority: Prior to abandonment, and to determine whether authorization is required under section 404 of the Federal Clean Water Act, CSXT shall contact the U.S. Army Corps of Engineers as follows: Mr. Gary Mannesto, Chief, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 1027, Detroit, MI 48231, telephone (313) 226-2432, to determine whether authorization is required under section 404 of the Federal Clean Water Act.

No comments to the EA were filed by the May 28, 1999 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.

SEA states that, following the line's abandonment, the right-of-way may be suitable for other

public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

This decision 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 subject to the condition that, prior to abandonment, and to determine whether authorization is required under section 404 of the Federal Clean Water Act, CSXT shall contact the U.S. Army Corps of Engineers as follows: Mr. Gary Mannesto, Chief, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 1027, Detroit, MI 48231, telephone (313) 226-2432, to determine whether authorization is required under section 404 of the Federal Clean Water Act.

2. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)¹ to allow rail service to continue must be received by the railroad and the Board by June 28, 1999, 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).

3. 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.”**

4. Provided no OFA has been received, this exemption will be effective on July 18, 1999. Petitions to stay must be filed by June 28, 1999, and petitions to reopen must be filed by July 8, 1999.

5. 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 June 18, 2000, 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 not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

¹ 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).

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

Vernon A. Williams
Secretary