

SERVICE DATE - FEBRUARY 20, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 536X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--IN
VIGO COUNTY, IN

Decided: February 13, 1997

By petition filed on October 21, 1996, 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 2.6-mile line of railroad known as the Saxton Branch, extending between milepost ZY-0.00, at Dewey, IN (near Terre Haute), and milepost ZY-2.6, at the end of the track, in Vigo County, IN.¹ The United Transportation Union seeks imposition of labor protective conditions. We will grant the exemption, subject to an environmental condition and standard employee protective conditions.

BACKGROUND

The line proposed for abandonment is a branch of CSXT's CE&D Subdivision, Chicago Service Lane, that emanates from CSXT's main line between Chicago, IL, and Evansville, IN, at Dewey. It is located in a light industrial area. According to CSXT, the line is in extremely poor condition and extensive rehabilitation will be required in the next year to maintain the track at Federal Railroad Administration class 1 standards. CSXT asserts that such maintenance costs cannot be justified by the small volume of traffic now being handled on the line.

CSXT states that, in recent years, only one company, Alcan Rolled Products (Alcan), has used the line to ship or receive freight. Alcan is located near the end of the line at milepost ZY-2.6 and operates an aluminum rolled products facility. According to CSXT, Alcan currently uses truck transportation for all of its outbound shipments and for most of its inbound shipments. Over the past three years, Alcan's use of rail service has been minimal: in 1994, it received 12 carloads of petroleum;² in 1995, 5 carloads; and in the first 9 months of 1996, 1 carload. CSXT claims that, after abandonment of the line, Alcan would use motor carriers exclusively to handle the small volume of petroleum that is now moved by rail. CSXT states that Alcan has been served with a copy of the petition.

¹ CSXT states that the line proposed for abandonment is owned 50% by CSXT and 50% by Consolidated Rail Corporation (Conrail). While Conrail remains a joint owner of the rail line, it abandoned its operations over the line in Conrail Abandonment in Vigo County, IN, Docket No. AB-167 (Sub-No. 801N) (ICC served May 15, 1986). CSXT states that since that time it has switched traffic to the sole shipper on the line for Conrail's account.

² Five of the 12 rail shipments received by Alcan were handled in switching service from Conrail. The last carload reciprocally switched by CSXT for Conrail to Alcan moved in June 1994.

CSXT notes that, because the line is only 2.6 miles long, there is no trackage to turn a train around. Consequently, whenever Alcan requires service, the train must be backed down the line rather than pulled. This requires that a caboose be attached to the end of the train. Also, because there are no gates at any of the crossings, a flagman must be used at each of the eight road crossings to stop traffic. CSXT states that this is a costly, as well as dangerous, operation and that abandonment of this line thus will improve safety for both CSXT and the motoring public because of the elimination of these eight road crossings.

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 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 time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. By allowing CSXT to avoid rehabilitation and maintenance expenses on this low-volume line and to apply its assets more productively elsewhere on its system, an exemption will promote safe and efficient rail transportation, foster sound economic conditions in transportation, and encourage efficient management [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 because the sole shipper on the line makes little use of rail service and has suitable alternative transportation service available to it. Nevertheless, to ensure that Alcan is notified of our action, we will direct CSXT to serve a copy of this decision on Alcan within 5 days of the service date of this decision and certify to us that it has done so. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the 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 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 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 effect of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on December 27, 1996. In the EA, SEA notes that

the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, has indicated that, if any archaeological artifacts or human remains are uncovered during construction, work must stop and discovery must be reported to them within 2 business days. Accordingly, SEA recommends in the EA that a condition be imposed requiring that, if any archaeological artifacts or human remains are found during salvage activities, CSXT shall cease work in the area and immediately contact the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology. Comments on the EA were due on January 22, 1997, but none was received.

The condition recommended by SEA will be imposed. Based upon 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.

Although SEA states that the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has requested a public use condition and none will be imposed. Nevertheless, we will provide a 20-day period after Federal Register publication for interested persons to request a public use condition.

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 the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the condition that, if any archaeological artifacts or human remains are found during salvage activities, CSXT shall cease work in the area and immediately contact the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology.

2. Notice will be published in the Federal Register on February 20, 1997.

3. CSXT is directed to serve a copy of this decision on Alcan within 5 days after service of this decision and certify to us that it has done so.

4. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 24, 1997.

5. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)³ must be filed by March 3, 1997; petitions to stay

³ See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), for regulations in effect at the time of filing of the exemption petition. We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued final rules in 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), that became effective on January 23, 1997. (continued...)

must be filed by March 7, 1997; requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by March 12, 1997; and petitions to reopen must be filed by March 17, 1997.

6. If a formal expression of intent to file an OFA has been timely submitted, an OFA to allow rail service to continue must be received by the railroad and the Board within 30 days after publication, subject to time extensions authorized under 49 CFR 1152.27(c)(2)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2).

7. 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."**

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³(...continued)

Because we have processed the exemption petition under the former regulations, we will continue to use the former regulations in this proceeding to process an OFA, if one is filed.