

SERVICE DATE – OCTOBER 27, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 773X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN HARLAN COUNTY, KY.

Digest:¹ This decision permits CSX Transportation, Inc., to end its common carrier rail service over approximately 1.6 miles of rail line in Harlan County, Ky., subject to standard employee protective conditions.

Decided: October 25, 2017

By petition filed on July 18, 2017, CSX Transportation, Inc. (CSXT), seeks an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to abandon an approximately 1.6-mile rail line on CSXT's Northern Region, Huntington Division, CV Subdivision, Engineering Appalachian Division, also known as the Merna Spur, between milepost OMV 250.1 at the end of the line and milepost OMV 248.5 at the wye connecting to the CSXT Glidden Siding in Harlan County, Ky. (the Line). Notice of the exemption was served and published in the Federal Register on August 7, 2017 (82 Fed. Reg. 36,848).

No comments concerning the proposed abandonment were filed. The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

According to CSXT, the Line was previously part of its Southern Region but, through a reorganization, it is now a part of its Northern Region. CSXT was authorized to discontinue service over the Line, and did so in March 2016. (CSXT Pet. 3 n.2) (citing CSX Transp.—Discontinuance of Serv. Exemption—in Harlan Cty., Ky., AB 55 (Sub-No. 753X) (STB served Feb. 18, 2016).)

CSXT states that in June 2017, it began serving JRL Coal, Inc. (JRL), which reopened a coal mine at the end of the Line. According to CSXT, JRL is the only shipper on the Line.² CSXT proposes to abandon the Line and then lease the track to JRL. CSXT states that a Track

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. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² CSXT submitted a letter from JRL stating that it does not oppose the abandonment. (See Pet., Ex. G.)

Lease Agreement has been entered into with JRL and that it will take effect once the abandonment has been consummated. According to CSXT, under the lease agreement, JRL will become responsible for maintenance of the Line and will upgrade the track and materials, while CSXT continues to provide service. JRL's use of the Line will be limited to: (1) movement of railcars between JRL's various plant facilities; (2) storage, loading, and unloading operations; and (3) receipt and delivery of railcars to CSXT.

DISCUSSION AND CONCLUSIONS

Under 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 necessary to protect shippers from the abuse of market power.

Detailed scrutiny of CSXT's proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. The Line's only shipper, JRL, has indicated that it does not oppose the abandonment. An exemption from the application process would minimize expenses, reduce regulatory barriers to exit, and result in the efficient and expeditious handling and resolution of this unopposed proceeding. 49 U.S.C. §§ 10101(2), (7), & (15). Other aspects of the RTP would not be adversely affected by the exemption.

The Board finds that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power. As discussed earlier, no comments have been filed opposing the proposed abandonment and JRL would continue to receive service on the Line.³

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its 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, the Board will impose on CSXT the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental and Historic Review. CSXT has submitted a combined environmental and historic report 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. The Board's Office of

³ Because the Board finds that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, there is no need to determine whether the proposed discontinuance is limited in scope.

Environmental Analysis (OEA) has reviewed the report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

In an Environmental Assessment (EA) issued on September 15, 2017, OEA recommended that two environmental conditions be imposed on any decision granting abandonment authority. The EA stated that because the Line would be leased to a surface coal mine operation, the U.S. Fish and Wildlife Service, Kentucky Field Office considers the actions of the mining operation to be an indirect effect of the proposed abandonment. Therefore, OEA recommended a condition that required CSXT to consult with appropriate state and federal agencies to ensure that the surface coal mining operation complied with all applicable state and federal regulations. The EA also stated that the U.S. Army Corps of Engineers, Nashville District (Corps) would review the information regarding the proposed abandonment provided by CSXT and request additional information if needed. The second recommended condition required CSXT to continue to consult with the Corps and comply with any reasonable requirements related to the Corps permitting process.

CSXT served the historic report on the Kentucky State Historic Preservation Officer (SHPO), pursuant to 49 C.F.R. § 1105.8(c). OEA had not heard from the SHPO and therefore was not able to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing on the National Register of Historic Places. Accordingly, OEA recommended a condition requiring CSXT to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process.

Comments on the EA were due by October 13, 2017, and three comments were filed. CSXT submitted a comment from the SHPO stating that no historic resources would be affected by the proposed abandonment and therefore no archeological or cultural survey is required. CSXT also submitted a comment from the Corps stating that, because the proposed abandonment would not involve the discharge of dredge or fill material, a Department of the Army permit is not required. Finally, CSXT submitted a list of permit numbers for the JRL mine and the Mine Safety and Health Administration Identification numbers for JRL.

OEA issued a Final EA on October 13, 2017. Based on the comments received, OEA no longer recommends imposing the Section 106 condition or the two environmental consultation conditions. The Board adopts all of OEA's analysis and, accordingly, will not impose environmental or historic preservation conditions.

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, the Board exempts 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 set forth in Oregon Short Line.

2. An Offer of Financial Assistance (OFA) under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 6, 2017, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1).⁴ Each OFA must be accompanied by the filing fee of \$1,800. See 49 C.F.R. § 1002.2(f)(25).

3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in boldface on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

4. Provided no OFA has been filed, this exemption will be effective on November 26, 2017.

5. Petitions to reopen and petitions to stay must be filed by November 13, 2017.

6. 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 27, 2018, 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 and Miller.

⁴ The Board’s regulations regarding OFAs have recently been modified. See Offers of Financial Assistance, EP 729 (STB served June 29, 2017). Among other modifications, any person now seeking to file an OFA must provide evidence of a continued need for rail service on the line subject to the OFA. 49 C.F.R. § 1152.27(c)(1)(iv)(E).