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SERVICE DATE - LATE RELEASE SEPTEMBER 13, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 653X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION– IN PIKE COUNTY, KY

Decided: September 13, 2004

By petition filed on July 15, 2004, 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 segment at the end of its line of railroad in its Southern Region, Huntington Division, Big Sandy Subdivision, also known as the Beaver Creek Spur. The 1.43-mile segment extends from milepost CMH 0.00 near Dunleary to the end of the line at milepost CMH 1.43, all in Pike County, KY. CSXT also seeks an exemption, as clarified in a letter dated July 19, 2004, from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904. Notice of the filing was served and published in the Federal Register on August 4, 2004 (69 FR 47208), instituting an exemption proceeding. The exemptions will be granted, subject to the standard employee protective conditions.

BACKGROUND

According to CSXT, the only shipper on the line, ELC Inc. (AEP), ceased shipping in October 2003 and has closed its coal facility at Praise Dock, KY. CSXT states that the segment of the rail line proposed for abandonment is a stub-ended line that has no local or overhead traffic, nor a demand for it. CSXT does not expect any rail-oriented business to develop on the line. Prior to closing its facility, AEP shipped 2,934 carloads of coal for the year 2002, 3,791 carloads for the year 2003, and no carloads for the year 2004.

CSXT states that the proposed abandonment will facilitate the Kentucky Transportation Cabinet's (KTC) plans for the expansion of a highway project on State Route 80. According to CSXT, it plans to sell the right-of-way to KTC upon abandonment. To expedite the process, CSXT also seeks an exemption from the OFA requirements of 49 U.S.C. 10904, and requests that the Board provide expedited handling and issue a decision within 60 days from the filing date of this proceeding, or by September 13, 2004. No one has filed in opposition to the proposed abandonment or OFA exemption.

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 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 the application 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 from the costs of owning and maintaining a portion of a line that is not in use [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transactions is not necessary to protect shippers from the abuse of market power because there are no shippers on the line. Nevertheless, to ensure that AEP is informed of the Board's action, CSXT will be required to serve a copy of this decision on AEP within 5 days after its service date and certify to the Board that it has done so. Given the market power finding, the Board need not determine whether the proposed abandonment is limited in scope.

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 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 abandonment. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on August 4, 2004. Based on the comments on the EA, SEA recommends that no environmental conditions be placed on any decision granting abandonment authority. Accordingly, we will not impose any environmental conditions.

As previously noted, to expedite the sale of the right-of-way to KTC, CSXT has requested that the proposed abandonment be exempted from the OFA requirements of 49 U.S.C. 10904. Exemptions from 49 U.S.C. 10904 have been granted from time to time, but only when the right-of-way is needed for a valid public purpose and there is no overriding public need for

continued rail service. See, e.g., Doniphan, Kensett and Searcy Railway—Abandonment Exemption—in Searcy, White County, AR, STB Docket No. AB-558X (STB served May 6, 1999). Here, CSXT has agreed to sell the right-of-way upon abandonment to KTC for a valid public purpose and there are no shippers on the line that need continued rail service. Further, imposition of OFA procedures could delay transfer of the line to KTC and jeopardize the timely beginning of KTC's plans to begin work on its highway expansion project and its efforts to obtain Federal construction funding. A public use for the right-of-way here has clearly been established by CSXT and KTC, and there is no public need to provide for any continued rail service. Accordingly, we will grant an exemption from the OFA requirements of 49 U.S.C. 10904.

The evidence of record establishes that the proposed exemption from 49 U.S.C. 10904 meets the criteria of 49 U.S.C. 10502. Applying OFA requirements in this instance is not necessary to carry out the rail transportation policy. Allowing the abandonment exemption to become effective expeditiously, without first being subject to these requirements, would minimize the need for Federal regulatory control over the rail transportation system, expedite the regulatory decision, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. It has already been determined that regulation is not necessary to protect shippers from an abuse of market power.

CSXT has requested that the decision granting the abandonment be made effective on an expedited basis to allow KTC to begin its construction on its project. Under the circumstances presented here, KTC's request for expedited handling is appropriate and will be granted. To accommodate that request, the exemption will be made effective on the service date of this decision.

The 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, the Board exempts from the prior approval requirements of 49 U.S.C. 10903-04 the abandonment 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).

2. CSXT is directed to serve a copy of this decision on AEP within 5 days of the service date of this decision and certify to the Board that it has done so.

3. This exemption will be effective on September 13, 2004. Petitions to reopen must be filed by October 8, 2004.

4. 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 13, 2005, 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.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary