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SERVICE DATE – AUGUST 15, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 664X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN ANDERSON COUNTY, SC

Decided: August 11, 2006

By petition filed on April 28, 2006, 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 12.74-mile line of railroad, between milepost AKL 26.26, near Belton, the end of the line, and milepost AKL 39.00, near Pelzer, on the Southern Region, Florence Division, Belton Subdivision, in Anderson County, SC (the line).

Notice of the filing was served and published in the Federal Register on May 18, 2006 (71 FR 28916). On June 7, 2006, protests were filed by Pickens Railway Company (Pickens) and Anderson County.¹ As explained below, we will deny the petition for exemption.

PRELIMINARY MATTERS

On June 27, 2006, CSXT filed a motion for leave to respond in this matter, accompanied by the response. CSXT asserts that its supplemental pleading is intended to respond to certain allegations made in the protests and provide for a more complete record.

On June 30, 2006, CSXT filed a motion for leave to update the record. On June 28, 2006, CSXT received a revised appraisal of the real estate that decreased CSXT's estimated net liquidation value of the real estate by \$55,438. CSXT also discovered additional revenue from leases on the line of \$3,510.

We will grant CSXT's motions for leave to file a response and to update the record in this case. Although our regulations at 49 CFR 1104.13(c) do not permit filing replies to replies, we may do so in a particular instance if it is warranted. See, e.g., Buffalo & Pittsburgh Railroad, Inc.–Abandonment Exemption–In Erie and Cattaraugus Counties, NY, STB Docket No. AB-369 (Sub-No. 3X), slip op. at 2 (STB served Sept. 18, 1998). Here, CSXT's response and the motion to update the record more fully explain the factual situation, and they were filed in time for us to adequately consider their contents.

¹ Anderson County attached statements from Belton Metal Company, a shipper on the line, Tri County Fertilizer and Specialty Co., Inc., and Owens Corning, shippers located on Pickens' line, and one potential shipper.

BACKGROUND

There are two shippers on the line, Belton Metal Company (Metal) and Belton Industries (Industries). Metal originated 16 carloads of scrap metal on the line in 2005.² Industries received 70 carloads of polypropylene and originated 1 outbound carload of polypropylene in 2005. This traffic generated revenues of \$178,290. An additional \$15,789 was generated in 2005 by intra-plant switching and the lease of track space to shippers for storage, for total revenues of \$194,079. CSXT seeks to abandon the line because this limited local traffic, considered alone, resulted in an avoidable loss of \$118,717 in 2005. CSXT also states that the line requires at least \$915,960 in rehabilitation to bring it to Federal Railroad Administration (FRA) Class 1 condition. CSXT's forecast year figures³ include revenues of \$215,868 for the 103 carloads of local traffic,⁴ plus \$16,401 of additional revenue and income from intra-plant switching and track leases, for total revenues of \$232,269. The avoidable loss from operations in the forecast year is \$108,013, and when opportunity costs of \$43,188 are considered, CSXT estimates the forecast year loss from operations to be \$151,201. In the subsidy year,⁵ the figures are: \$232,893 in total revenues; a \$108,101 avoidable loss from operations; and when opportunity costs and rehabilitation costs of \$915,960 are factored in, an estimated subsidy year loss from operations of \$1,067,249.

The line also handles the overhead traffic of 10 shippers, all located on Pickens' shortline. According to CSXT, this traffic is interchanged on the line at Belton Yard, about 2.14 miles north of the end of the line. Inclusion of the overhead traffic results in a profit of \$124,868 in 2005, and a profit of \$150,071 in the forecast year. When opportunity costs of \$44,002 are considered, the estimated forecast year profit from operations is reduced to \$106,069. In the subsidy year, there is a profit of \$148,062, which becomes a loss of \$811,898 when opportunity costs of \$44,001 and rehabilitations costs are factored in.

CSXT states that, because of the limited volume of local traffic on the line, the line has not been rehabilitated in years, and is currently operated as excepted track. CSXT proposes significant tie and ballast replacement, resurfacing of the line and renewal of road crossings in order to bring the line to FRA Class 1 standards. CSXT's expert concludes that the line is difficult to operate and cannot be operated efficiently because of the line's poor condition.

² CSXT states that the switch track to Metal was unavailable for 6 months in 2005 due to overgrown vegetation.

³ The forecast year is the 12-month period beginning April 1, 2006; CSXT's base year was the calendar year 2005.

⁴ CSXT assumed the switch track to Metal was operable, see supra note 2, and doubled Metal's 2005 carload traffic for the forecast year.

⁵ The subsidy year is the 12-month period ending June 30, 2007.

CSXT notes that there are transportation alternatives for all of the shippers served by the line, including a Norfolk Southern Railway Company line that connects to the other end of Pickens' line, CSXT transload facilities, and motor carrier transportation.

Pickens and Anderson County oppose the petition for exemption. In particular, Pickens argues that: (1) the line currently handles the traffic of 12 active shippers; (2) the abandonment would harm competition; (3) the line is profitable; and (4) CSXT has failed to satisfy its burden of proof with regards to the amount to rehabilitate the line. Pickens states that the Board should consider both local and overhead traffic in determining the profitability of the line. Pickens also argues that CSXT's rehabilitation costs are excessive.

In response, CSXT argues that profitability of the line should be determined based on local traffic. CSXT also states that it has not overstated the cost of rehabilitation, and that its track inspection reports and estimated rehabilitation costs are accurate. CSXT claims that its rehabilitation costs are high because it has stricter rehabilitation requirements than FRA. CSXT, therefore, proposes to install more than the minimum number of ties, renew all existing road crossings, and resurface the entire line. Finally, CSXT states that abandonment of the line will not harm either the shippers on the line or the overhead shippers on Pickens' line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval, based on our finding that the present or future public convenience and necessity require or permit the abandonment. Under 49 U.S.C. 10502, however, we exempt a transaction or service from the otherwise applicable regulatory requirements or procedures when we find that: (1) those requirements or procedures are 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.

The exemption process is designed to minimize regulatory burdens. An exemption is appropriate when we have sufficient information to reach an informed decision. Typically, the types of abandonment and discontinuance proposals that are authorized through the exemption process are those where shippers do not contest the abandonment or, if they do contest it, the revenue from the traffic on the line is clearly marginal compared to the cost of operating the line. See Boston and Maine Corporation—Abandonment Exemption—In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 75X) et al., slip op. at 5 (STB served Dec. 31, 1996) (Boston and Maine); Tulare Valley Railroad Company—Abandonment and Discontinuance Exemption—In Tulare and Kern Counties, CA, STB Docket No. AB-397 (Sub-No. 5X), slip op. at 8 (STB served Feb. 21, 1997); San Joaquin Valley RR Co.—Aban.—Kings & Fresno Counties, CA, 2 S.T.B. 270, 274-75 (1997). Where there is an inadequate record on which to grant a petition for abandonment exemption, the petition will be denied. See Boston and Maine, slip op. at 6.

As in any abandonment case, whether authority is sought by application or petition, the railroad must demonstrate that the line in question is a burden on interstate commerce. Typically, in an attempt to make that showing, the carrier submits evidence to demonstrate that the costs it incurs exceed the revenues attributable to the line. While abandonment decisions are not based solely on mathematical computations and considerations, the petitioner bears the burden of showing that keeping the line in service would impose a burden on it that outweighs the harm that would befall the shipping public, and the adverse impacts on rural and community development, if the rail line were abandoned. See Gauley River Railroad, LLC—Abandonment and Discontinuance of Service—In Webster and Nicholas Counties, WV, STB Docket No. AB-559 (Sub-No. 1X) et al., slip op. at 7 (STB served June 16, 1999).

In this proceeding, the evidence presented is not sufficient for us to conclude that we should grant the proposed abandonment exemption. CSXT states that the local traffic on the line results in a loss operation, but admits that a profit is made when overhead traffic is added to the computation. Despite this profit, CSXT argues that the line is still a burden on interstate commerce because the significant rehabilitation costs cannot be recouped. However, CSXT fails to demonstrate that continued operation of the line is a burden because CSXT does not substantiate the rehabilitation figures it provides.

First, the line is profitable. Although service to the 2 local shippers produces a loss, CSXT operates the line at a profit when the revenue from the 10 overhead shippers is considered. The traffic of the 10 overhead shippers from Pickens' line is interchanged with CSXT at Belton Yard, a point on the line. The provisions of 49 CFR 1152.31 describe the revenues and income attributable to branch lines in abandonment proceedings under 49 U.S.C. 10903. Section 1152.31(a)(1) states that revenues are included for all traffic that originates or terminates on the branch. Section 1152.31(a)(3) further states that “[a]ll traffic that is received or forwarded through interchange at a point on the branch . . . shall be considered as originating or terminating on the branch.” Therefore, the revenue and income from the overhead shippers is attributable to the line.

Citing People of State of Ill. v. ICC, 698 F.2d 868 (7th Cir. 1983), CSXT, in its response, makes the argument that the profitability of the line should be determined based solely on local traffic. However, in that case, while the court stated that loss-generating local shippers could not demand continued service simply because the line was used for the movement of through traffic, the court also stated that, “the Commission [i.e., the Board] has long recognized that . . . revenue derived from overhead traffic is a factor in determining a line’s earning capacity”⁶ The Board’s regulations support this proposition.

Second, CSXT has not provided persuasive and substantiated information in support of its high rehabilitation costs that it contends makes continued operation of the line unprofitable.

⁶ Id. at 873.

CSXT's cost estimates are questionable because: (1) CSXT's rehabilitation proposal installs more than the required ties per mile to qualify as FRA Class 1 track; (2) CSXT appears to indicate in its tie replacement numbers that none of the existing ties in the track meet FRA Class 1 standards, even though track inspection reports indicate few, if any, tie problems; (3) CSXT includes costs to renew virtually all existing road crossings, including repaving, even though road crossings are not covered by FRA standards; and (4) CSXT proposes resurfacing the entire line, even though inspection reports show only two occurrences of corrections made for track alignment or surface. Accordingly, we are unable to determine the extent to which rehabilitation of the line is necessary or the reasonableness of the associated cost estimates.⁷

Therefore, upon review of the record before us, we conclude that CSXT has not met the criteria in 49 U.S.C. 10502. Accordingly, we will deny the petition for exemption without prejudice to CSXT's either refiling a petition for exemption or filing a formal abandonment application to provide the information needed to make its case. (Any new filing must be under a new docket sub-number, accompanied by a new filing fee.)

It is ordered:

1. CSXT's motion for leave to file a response is granted.
2. CSXT's motion to update the record is granted.
3. CSXT's petition for exemption is denied.
4. This decision is effective on the date of service.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary

⁷ In addition, CSXT fails to explain why the Board should accept the resulting increase in rehabilitation costs over what would be required by FRA.