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SERVICE DATE - LATE RELEASE JULY 8, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 568X)

CSX TRANSPORTATION, INC. — ABANDONMENT EXEMPTION —  
IN FRANKLIN COUNTY, PA

Decided: July 8, 2004

In a decision served on March 9, 1999 (March 1999 Decision), the Board, using its authority under 49 U.S.C. 10502, exempted the abandonment by CSX Transportation, Inc. (CSXT) of a 1.9-mile rail line known as the Baltimore Service Lane, Lurgan Subdivision (the Line) from the prior approval requirements of 49 U.S.C. 10903. The Line extends between milepost BAV-20.5 at 4th Street and milepost BAV-22.4 at Commerce Street in Chambersburg, Franklin County, PA. The Line consists of three segments:

Segment 1, from 4th Street (Valuation Station 1083+20, at milepost BAV-20.5) to Main Street (Valuation Station 1096+20, at approximately milepost 20.8);

Segment 2, from the latter point at Main Street to South Street (Valuation Station 1122+30); and

Segment 3, from the latter point at South Street to Commerce Street (Valuation Station 1182+72 at milepost BAV-22.4).

At the request of the Borough of Chambersburg (the Borough), the March 1999 Decision included a notice of interim trail use (NITU) for the portion of the line between Main Street and Commerce Street (approximately Segments 2 and 3).

Four related individuals with the surname Fox (the Foxes), who have interests in a manufacturing facility adjacent to Segment 2, filed an offer of financial assistance (OFA) to purchase that segment. CSXT and the Foxes agreed on a purchase price, and the Foxes were authorized to acquire Segment 2. For a variety of reasons, the sale was not consummated.

In a petition filed August 15, 2003, three of the Foxes sought to amend the OFA to include Segment 1. New Franklin Properties, LLC (NFP), a limited liability company wholly owned by one of the Foxes (Frederick Armstrong Fox), filed a petition on September 23, 2003, seeking to intervene in this proceeding and asking the Board to either grant the August 15 petition or, alternatively, reopen the March 1999 Decision and permit NFP to submit its own OFA for Segment 1.

In a decision served January 20, 2004 (January 2004 Decision), the Board granted NFP's request for intervention; noted that CSXT did not object to the expansion of the OFA; and directed the parties to provide additional evidence about their respective plans for Segment 1. In response, the Foxes and NFP filed an affidavit of Frederick Armstrong Fox; the Borough filed an affidavit of Eric Oyer; the Foxes and NFP filed a reply to the Oyer affidavit; the Borough filed a reply to the Fox affidavit; and CSXT filed a reply to both affidavits. Also, the Foxes and NFP filed a motion to strike the CSXT reply, and CSXT filed a reply to that motion.

## DISCUSSION AND CONCLUSIONS

The Motion to Strike. The Foxes and NFP have asked the Board to strike the CSXT reply on the ground that it is untimely. They maintain that CSXT should have declared its opposition to the expansion of the OFA earlier. While an earlier statement of CSXT's opposition would have been helpful to the resolution of this proceeding, it was not required. Therefore, CSXT's reply will not be stricken as untimely.

Alternatively, the Foxes and NFP have asked that the motion to strike be treated as a surreply. This alternative request is reasonable. The motion will be treated as a surreply to the CSXT reply, accepted for consideration, and made part of the record.

Segment 1. As noted in the January 2004 Decision, slip op. at 3-4, the OFA process includes time limits designed to protect the owning railroad from bearing the costs associated with unreasonable delay in disposing of money-losing rail lines. The time may be extended when the owning railroad does not object. Id. Indeed, the time was previously extended in this case for Segment 2 in a decision served September 10, 2001, because CSXT remained willing to sell that segment under the agreed terms and would not be burdened by reinstatement of the OFA for Segment 2.

In contrast, CSXT has now made clear that it opposes expansion of the OFA to include Segment 1. Because the time for filing an OFA for Segment 1 expired over 5 years ago, in March 1999, and that limit is meant to protect the owning railroad, the requested expansion of the OFA to include Segment 1 will be denied at this late date.

Segment 2. The parties apparently have had an agreement for a sale of Segment 2 since April 1999. CSXT asks the Board to: (1) require the Foxes to notify CSXT within 10 days of the service of this decision whether they still intend to acquire Segment 2 through the OFA process; (2) if the Foxes still intend to acquire Segment 2, require the Foxes to complete the acquisition of Segment 2 within no more than 30 days after the service of this decision; and (3) provide that if the Foxes fail to consummate the purchase of Segment 2 within 30 days, and if CSXT and the Foxes do not agree otherwise, the OFA will be deemed to have been withdrawn and CSXT may proceed to dispose of Segment 2 either under the interim trail use/rail banking

condition or as abandoned property. CSXT's request for such expedited action is reasonable and will be granted.<sup>1</sup>

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion to strike filed by the Foxes and NFP on March 3, 2004, is denied, but the motion is accepted for consideration as a surreply to the CSXT reply filed February 27, 2004, and is made part of the record in this proceeding.

2. The August 15, 2003 petition to expand the scope of the outstanding OFA to include Segment 1, or, alternatively, to permit the filing of a new OFA that would include Segment 1, as well as Segment 2, is denied.

3. The September 23, 2003 petition asking that the Board grant the relief sought in the August 15 petition, or, alternatively, that NFP be permitted to file an OFA for Segment 1, is denied.

4. Ordering paragraph 1 of the decision served September 17, 2003 ("Pending further order of the Board, CSXT shall not consummate the abandonment of the 4th Street-to-Main Street segment and shall take no action that would alter the present status of that segment") is vacated.

5. The Foxes must notify CSXT by July 19, 2004, whether they still intend to acquire Segment 2 through the OFA process. If the Foxes notify CSXT by July 19, 2004, that they still intend to acquire Segment 2 through the OFA process, consummation of the acquisition of Segment 2 must occur by August 9, 2004, unless CSXT and the Foxes agree otherwise. If the Foxes notify CSXT, by July 19, 2004, that they intend to acquire Segment 2 through the OFA process, but consummation of the acquisition of Segment 2 has not occurred by August 9, 2004, and CSXT and the Foxes have not reached an agreement for an extension of this new deadline, the OFA will be deemed to have been withdrawn and CSXT may proceed to dispose of Segment 2 either under the interim trail use/rail banking condition or as abandoned property. Similarly, if the Foxes notify CSXT by July 19, 2004, that they no longer intend to acquire Segment 2 through the OFA process, the OFA will be deemed to have been withdrawn and

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<sup>1</sup> The January 2004 Decision extended until July 30, 2004, the negotiating period under the NITU and also provided that the authority to abandon must be exercised on or before that date.

CSXT may proceed to dispose of Segment 2 either under the interim trail use/rail banking condition or as abandoned property.

6. This decision is effective on July 15, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary